

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 19,602, 5 ta' Lulju, 2016

Taqsim A

MALTA

ATT Nru XXXV tal-2016

ATT maħruġ b'liġi mill-Parlament ta' Malta.

ATT biex jemenda l-Att dwar il-Komunikazzjonijiet u Transazzjonijiet Elettroniċi, u biex jipprovdi dwar ħwejjeġ anċillari jew konnessi miegħu.

ACT No. XXXV of 2016

AN ACT enacted by the Parliament of Malta.

AN ACT to amend the Electronic Commerce Act and to make provision with respect to matters ancillary thereto or connected therewith.

Nagħti l-kunsens tiegħi.

(L.S.)

**MARIE-LOUISE
COLEIRO PRECA
President**

5 ta' Lulju, 2016

ATT Nru XXXV tal-2016

ATT biex jemenda l-Att dwar il-Komunikazzjonijiet u Transazzjonijiet Elettronici, u biex jipprovdi dwar hwejjeġ ancillari jew konnessi miegħu.

IL-PRESIDENT bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, harget b'ligi dan li ġej:-

1. (1) It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2016 li jemenda l-Att dwar il-Komunikazzjonijiet u Transazzjonijiet Elettronici, u dan l-Att għandu jinqara u jinftiehem haġa waħda mal-Att dwar il-Komunikazzjonijiet u Transazzjonijiet Elettronici, hawn iżjed 'il quddiem imsejjaħ "l-Att prinċipali".

Titolu fil-qosor,
skop u bidu fis-
seħħ.
Kap. 426.

(2) L-iskop ta' dan l-Att huwa li jemenda l-Att dwar il-Komunikazzjonijiet u Transazzjonijiet Elettronici u biex jipprovdi għal dawk il-mizuri taħt il-ligi nazzjonali li huma meħtieġa biex jiżguraw l-implimentazzjoni effettiva tar-Regolament (UE) Nru 910/2014 tal-Parlament Ewropew u tal-Kunsill tat-23 ta' Lulju 2014 dwar l-identifikazzjoni elettronika u s-servizzi fiduċjarji għal transazzjonijiet elettronici fis-suq intern u li jhassar id-Direttiva 1999/93/KE.

(3) Kemm-il darba ma jingħadx xort'oħra f'dan l-Att, id-dispożizzjonijiet ta' dan l-Att għandhom jidhlu fis-seħħ mill-1 ta' Lulju, 2016.

2. L-artikolu 2 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-
artikolu 2 tal-
Att prinċipali.

(a) minflok il-kliem "F'dan l-Att, kemm-il darba r-rabta tal-kliem ma teħtieġx xort'oħra" għandhom jidhlu l-kliem

A 1104

"F'dan l-Att, it-tifsiriet li jinsabu fl-Artikolu 3 tar-Regolament għandhom japplikaw kemm-il darba r-rabta tal-kliem ma tkunx teħtieġ xort'oħra";

(b) it-tifsiriet "akkreditazzjoni volontarja", "apparat ta' oriġinar ta' firma sigura", u "apparat ta' verifika ta' firma" għandhom jithassru;

(c) it-tifsira "awtorità kompetenti" għandha tiġi sostitwita bit-tifsira ġdida li ġejja:

" "awtorità tal-infurzar" tfisser kull entità pubblika li kif hemm fil-liġi hija awtorizzata li tiegħu azzjoni ta' infurzar, iżda ma tinkludix il-qorti tkun kif tkun deskritta;"

(d) minnufih wara t-tifsira ġdida "awtorità tal-infurzar" għandha tiżdied it-tifsira ġdida li ġejja:

" "azzjoni ta' infurzar" tfisser kull forma ta' azzjoni ta' infurzar tkun kif tkun deskritta, inkluża l-impożizzjoni ta' sanzjonijiet li xi awtorità tal-infurzar, inkluż ir-regolatur kompetenti, għandha s-setgħa li tiegħu kif hemm fil-liġi;"

(e) it-tifsira "ċertifikat" għandha tiġi sostitwita b'dan li ġej:

" "ċertifikat" tfisser kull waħda minn dawn li ġejjin:

(a) ċertifikat għall-firma elettronika;

(b) ċertifikat għas-sigill elettroniku; jew

(c) ċertifikat tal-awtentikazzjoni ta' siti elettronici;"

(f) it-tifsira "ċertifikat kwalifikat" għandha tithassar;

(g) it-tifsira "*data* ta' verifika ta' firma" għandha tithassar;

(h) minnufih wara t-tifsira "*data*" għandha tiżdied it-tifsira ġdida li ġejja:

" "Direttiva dwar il-Kummerċ Elettroniku" tfisser id-Direttiva 2000/31/KE tal-Parlament Ewropew u tal-Kunsill tat-8 ta' Ġunju 2000 dwar ċerti aspetti legali ta' servizzi minn soċjetà ta' informazzjoni, b'mod partikolari l-kummerċ elettroniku, fis-suq intern;"

(i) minnufih wara t-tifsira ġdida "Direttiva dwar il-

Kummerċ Elettroniku" għandha tizdied it-tifsira ġdida li ġejja:

"entità kwalifikata" tfisser:

Kap. 378. (a) għaqda ta' konsumaturi reġistrata kif hemm fit-tifsira tat-Taqsima IV tal-Att dwar l-Affarijiet tal-Konsumatur, u organizzazzjoni volontarja rikonoxxuta mir-regolatur kompetenti bħala li għandha interess legittimu fil-protezzjoni tal-interessi kollettivi tal-konsumaturi:

Kap. 378. Izda qabel ma jirrikonoxxi lil xi organizzazzjoni volontarja bħala entità kwalifikata, ir-regolatur kompetenti għandu jikkonsulta ruhu mal-Kunsill għall-Affarijiet tal-Konsumatur kif imwaqqaf taht l-Att dwar l-Affarijiet tal-Konsumatur;

(b) fil-kuntest tal-artikoli 8A, 8B u 8Ċ kull awtorità ta' infurzar li l-Att japplika għaliha;

(ċ) korp pubbliku indipendenti wiehed jew aktar, li jkollhom interess legittimu biex jiżguraw il-protezzjoni tal-interessi kollettivi tal-konsumaturi ta' xi servizzi regolati bid-Direttiva dwar il-Kummerċ Elettroniku jew bir-Regolament fl-Istati Membri l-oħra fejn jeżistu dawn il-korpi;

(d) organizzazzjonijiet volontarji fi Stati Membri oħra li l-għan tagħhom hu li jħares l-interessi kollettivi tal-konsumaturi skont il-kriterji stabbiliti mil-liġi nazzjonali tagħhom;

(e) organizzazzjoni waħda jew aktar rikonoxxuti mir-regolatur kompetenti bħala rappreżentanti kollettivi ta' provdituri ta' servizz ta' soċjetà ta' informazzjoni; jew

(f) kull entità kwalifikata minn Stat Membru li tkun inkluża fil-lista ta' entitajiet kwalifikati kif jistgħu minn żmien għal żmien jiġu ppubblikati mill-Kummissjoni Ewropea;"

(j) it-tifsiriet "firma elettronika" u "firma elettronika avvanzata" għandhom jithassru;

A 1106

(k) minnufih wara t-tifsira "komunikazzjoni elettronika" ghandha tizdied it-tifsira ġdida li ġejja:

" "komunikazzjoni kummerċjali" tfisser kull forma ta' komunikazzjoni maħsuba biex tippromwovi direttament jew indirettament, l-oġġetti, is-servizzi jew l-immagini tal-kumpannija, organizzazzjoni jew persuna li jkunu qegħdin isegwu attività kummerċjali, industrijali jew ta' xi sengħa jew li jkunu qegħdin jeżerċitaw professjoni regolata. Dawn li ġejjin ma ghandhomx fihom infushom jikkostitwixxu komunikazzjonijiet kummerċjali:

(a) informazzjoni li tippermetti aċċess dirett għall-attività tal-kumpannija, organizzazzjoni jew persuna, b'mod partikolari *domain name* ta' indirizz ta' posta elettronika;

(b) komunikazzjonijiet li jkollhom x'jaqsmu ma' oġġetti, servizzi jew l-immagini tal-kumpannija, organizzazzjoni jew persuna miġbura b'mod indipendenti, partikolarment meta dan ma jsirx bi skop ta' qligħ finanzjarju,";

(l) minnufih wara t-tifsira "konsumatur" ghandha tizdied it-tifsira ġdida li ġejja:

" "ksur transkonfini" tfisser:

(a) att jew ommissjoni kontra dan l-Att u, jew ir-Regolament li jseħħ f'Malta u li jikkaġuna ħsara jew x'aktarx jikkaġuna ħsara lill-interessi kollettivi ta' konsumaturi li jkunu jirrisjedu fi Stat Membru jew fi Stati Membri barra minn Malta; jew

(b) att jew ommissjoni kontra dan l-Att u, jew ir-Regolament minn bejjiegħ jew provditur li jkun stabbilit f'Malta u li jikkaġuna ħsara jew x'aktarx jikkaġuna ħsara lill-interessi kollettivi ta' konsumaturi li jkunu jirrisjedu fi Stat Membru jew fi Stati Membri barra minn Malta; jew

(ċ) att jew ommissjoni kontra dan l-Att u, jew ir-Regolament li jseħħ f'Malta u li jikkaġuna ħsara jew x'aktarx jikkaġuna ħsara lill-interessi kollettivi ta' konsumaturi li jkunu jirrisjedu fi Stat Membru jew fi Stati Membri barra minn Malta meta l-provi jew l-assi li jkollhom x'jaqsmu mal-att jew l-ommissjoni jkunu jinsabu f'Malta,";

(m) minnufih wara t-tifsira ġdida "ksur transkonfini"

għandha tizzied it-tifsira ġdida li ġejja:

" "Kummissjoni Ewropea" jew "Kummissjoni" tfisser il-Kummissjoni Ewropea tal-Unjoni Ewropea;"

(n) minnufih wara t-tifsira "preskritt" għandha tizzied it-tifsira ġdida li ġejja:

" "professjoni regolata" tfisser kull professjoni li tinkwadra fit-tifsira:

(a) tal-Artikolu 1(d) tad-Direttiva tal-Kunsill Ewropew 89/48/KEE tal-21 ta' Diċembru 1988 dwar sistema ġenerali għar-rikonoxximent ta' diplomi ta' edukazzjoni oġhla mogħtijin mat-tmiem ta' edukazzjoni professjonali u taħriġ li tkun damet mill-anqas tliet snin; jew

(b) tal-Artikolu 1(f) tad-Direttiva tal-Kunsill Ewropew 92/51/KEE tat-18 ta' Ġunju 1992 dwar it-tieni sistema ġenerali għar-rikonoxximent ta' edukazzjoni professjonali u taħriġ biex jissupplimentaw id-Direttiva 89/84/KEE;"

(o) minnufih wara t-tifsira ġdida "professjoni regolata" għandha tizzied it-tifsira ġdida li ġejja:

" "provvidur ta' servizz" tfisser kull persuna stabbilita f'Malta li tipprovdi servizzi ta' soċjetà ta' informazzjoni;"

(p) minnufih wara t-tifsira ġdida "provvidur ta' servizz" għandha tizzied it-tifsira ġdida li ġejja:

" "provvidur ta' servizz ta' ċertifikat" tfisser il-provvidur tas-servizz fiduċjarju li johroġ iċ-ċertifikati;"

(q) it-tifsira "provvidur ta' servizz ta' ċertifikazzjoni ta' firma" għandha tithassar;

(r) minnufih wara t-tifsira ġdida "provvidur ta' servizz ta' ċertifikat" għandha tizzied it-tifsira ġdida li ġejja:

" "qasam koordinat" tfisser ir-rekwiziti applikabbli għal provviduri ta' servizz ta' soċjetà ta' informazzjoni jew għal servizzi ta' soċjetà ta' informazzjoni, kemm jekk dawk ikunu ta' natura ġenerali jew maħsuba speċifikament għalihom, u tkopri rekwiziti li l-provvidur ta' servizz għandu jikkonforma ruħu magħhom fir-rigward:

A 1108

(a) tad-dhul għall-attività ta' servizz minn soċjetà ta' informazzjoni, bħalma huma r-rekwiżiti dwar kwalifiki, awtorizzazzjoni jew notifikazzjoni;

(b) tax-xogħol tal-attività ta' servizz ta' soċjetà ta' informazzjoni, bħalma huma r-rekwiżiti dwar l-imġiba ta' provditur ta' servizz, ir-rekwiżiti dwar il-kwalità jew kontenut tas-servizz, inklużi dawk applikabbli għal reklamar u l-kuntratti, jew rekwiżiti dwar ir-responsabbiltà tal-provditur ta' servizz,

izda ma jkoprix rekwiżiti bħal dawk applikabbli għal oġġetti bħala tali, għall-kunsinna ta' oġġetti jew għal servizzi li mhumiex provduti b'mezzi elettronici;"

(s) minnufih wara t-tifsira ġdida "qasam koordinat" għandha tiżdied it-tifsira ġdida li ġejja:

" "ir-Regolament" tfisser ir-Regolament Nru 910/2014 tal-Parlament Ewropew u tal-Kunsill tat-23 ta' Lulju 2014 dwar l-identifikazzjoni elettronika u s-servizzi fiduċjarji għal transazzjonijiet elettronici fis-suq intern u li tħassar id-Direttiva 1999/93/KE;"

(t) minnufih wara t-tifsira ġdida "ir-Regolament" għandha tiżdied it-tifsira ġdida li ġejja:

" "regolatur kompetenti" tfisser kull korp pubbliku bħal dawk li jista' jiġi mahtur mill-Ministru fis-Sitt Skeda biex jaġixxi bħala l-korp regolatorju appuntat biex jiżgura li jkun hemm konformità ma' dan l-Att u, jew mar-Regolament:

Izda l-Ministru jista' jemenda dik l-Iskeda b'ordni fil-Gazzetta, u meta jagħmel hekk huwa jista' jipprovdi dwar l-eżerċizzju tal-poteri regolatorji tal-korp regolatorju li jkun mahtur biex jaġixxi bħala r-regolatur kompetenti għall-iskopijiet ta' dan l-Att:

Izda wkoll meta jkun qed jagħmel dan, il-Ministru jista' jahtar korpi pubbliċi differenti biex jamministraw u jinforzaw dispożizzjonijiet differenti ta' dan l-Att u, jew tar-Regolament. Meta jagħmel dan il-Ministru għandu jistabbilixxi b'mod ċar il-mandat li jingħata lil kull korp pubbliku bħal dak filwaqt li jiżgura wkoll li jkun hemm koordinazzjoni effettiva bejn dawk il-korpi;"

(u) minnufih wara t-tifsira "sistema ta' informazzjoni"

għandha tizzied it-tifsira ġdida li ġejja:

" "Stat Membru" tfisser Stat Membru tal-Unjoni Ewropea;"

(v) minnufih wara t-tifsira "transazzjoni" għandha tizzied it-tifsira ġdida li ġejja:

" "Tribunal" tfisser it-Tribunal ta' Reviżjoni Amministrattiva mwaqqaf bl-artikolu Kap. 490. 5 tal-Att dwar il-Ġustizzja Amministrattiva;" u

(w) minnufih wara t-tifsira ġdida "Tribunal" għandha tizzied it-tifsira ġdida li ġejja:

" "Unjoni" tfisser l-Unjoni Ewropea."

3. Minflok il-kliem "awtorità kompetenti", kull fejn jinsabu fl-Att prinċipali, għandhom jidhlu l-kliem "regolatur kompetenti".

Emenda ġenerali fl-Att prinċipali.

4. Is-subartikolu (1) tal-artikolu 4 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Emenda tal-artikolu 4 tal-Att prinċipali.

"(1) Sakemm ma jkunx ġie preskritt xort'oħra, id-dispożizzjonijiet ta' dan l-Att u tar-Regolament m'għandhomx japplikaw għal dawk l-attivitajiet jew oqsma li jinsabu elenkati fil-Hames Skeda. Il-Ministru jista', wara konsultazzjoni mar-regolatur kompetenti, b'avviż fil-Gazzetta, jemenda l-Hames Skeda."

5. L-artikolu 6 tal-Att prinċipali għandu jiġi mħassar.

Thassir tal-artikolu 6 tal-Att prinċipali.

6. Minnufih wara l-artikolu 8 tal-Att prinċipali għandhom jizziedu l-artikoli ġodda li ġejjin:

Żjieda ta' artikoli ġodda mal-Att prinċipali.

"Is-suq intern. 8A. (1) Bla ħsara għad-dispożizzjonijiet tas-subartikolu (4), kull hteġa li tinkwadra fi h'dan il-qasam koordinat għandha tkun tapplika għall-provdiment tas-servizz ta' soċjetà ta' informazzjoni minn provditur ta' servizz stabbilit f'Malta, irrISPettivament jekk dak is-servizz ikunx provdut f'Malta jew f'xi Stat Membru ieħor.

A 1110

(2) Bla ħsara għad-dispożizzjonijiet tas-subartikolu (4) awtorità tal-infurzar li jkollha responsabbiltà fir-rigward ta' kull rekwiżit fis-subartikolu (1), għandha tiżgura li l-provdiment ta' servizz ta' informazzjoni minn provditur ta' servizz stabbilit f'Malta jkun jikkonforma ma' dak ir-rekwiżit irrispettivament minn jekk is-servizz ikunx provdut f'Malta jew f'xi Stat Membru ieħor, u għandhom ikunu disponibbli kull setgħa, rimedju jew proċedura għat-tehid ta' azzjoni ta' infurzar sabiex jiġi żgurat li jkun hemm konformità.

(3) Bla ħsara għad-dispożizzjonijiet tas-subartikoli (4) u (5), m'għandu jiġi applikat ebda rekwiżit għall-provdiment ta' servizz ta' soċjetà ta' informazzjoni minn provditur ta' servizz stabbilit f'xi Stat Membru li ma jkunx Malta għal raġunijiet li jaqgħu fil-qasam koordinat, jekk l-applikazzjoni tar-rekwiżit tkun ixekkel il-libertà li jiġu provduti servizzi minn soċjetà ta' informazzjoni lil xi persuna f'Malta minn dak l-Istat Membru.

(4) Is-subartikoli (1), (2) u (3) m'għandhomx japplikaw għall-oqsma elenkati fis-Seba' Skeda li tinsab ma' dan l-Att.

(5) Ir-referenza għal xi rekwiżiti li l-applikazzjoni tagħhom tista' xxekkel il-libertà li jiġu provduti servizzi minn soċjetà ta' informazzjoni minn Stat Membru ieħor fis-subartikolu (3) ma tinkludi l-ebda rekwiżit li jzomm il-livell ta' protezzjoni għas-saħħa pubblika u għall-interessi tal-konsumatur stabbiliti mil-liġi tal-Unjoni Ewropea.

Derogi mill-artikolu 8A.

8B. (1) Minkejja d-dispożizzjonijiet tal-artikolu 8A(3), l-awtorità tal-infurzar tista' tieġu miżuri, inklużi l-applikazzjoni ta' kull rekwiżit li kieku xort'ohra ma japplikawx bis-saħħa tal-artikolu 8A(3), fir-rigward ta' servizz minn soċjetà ta' informazzjoni mogħti, meta dawk il-miżuri jkunu meħtieġa għal raġunijiet ta' -

(a) l-ordni pubbliku, partikolarment il-prevenzjoni, l-investigazzjoni, is-sejbien u l-prosekuzzjoni ta' reati kriminali, inkluża l-protezzjoni tal-minuri u l-ġlieda kontra kull tixwix għall-mibegħda għar-ragunijiet ta' razza, sess, reliġjon jew nazzjonalità, u ksur tad-dinjità umana għal dawk li huma persuni individwali;

(b) il-ħarsien tas-saħħa pubblika;

(ċ) is-sigurtà pubblika, inkluż il-ħarsien tas-sigurtà u d-difiża nazzjonali; jew

(d) il-ħarsien tal-konsumaturi, inklużi investituri,

u dawn ikunu proporzjonati ma' dawk l-għanijiet.

(2) Minkejja d-dispożizzjonijiet tal-artikolu 8A(3), f'kull każ li fih l-awtorità tal-infurzar ma tkunx parti fil-proċedimenti, il-Qorti tista', wara li jsir rikors minn xi persuna jew minn jeddha, tapplika xi rekwizit li xort'oħra ma japplikax bis-saħħa tal-artikolu 8A(3) fir-rigward ta' servizz minn soċjetà ta' informazzjoni partikolari, jekk l-applikazzjoni ta' dik il-liġi jew ta' dak ir-rekwizit tkun meħtieġa u proporzjonata għal xi wieħed mill-għanijiet stabbiliti fis-subartikolu (1).

(3) Is-subartikoli (1) u (2) għandhom japplikaw biss meta s-servizz minn soċjetà ta' informazzjoni jkun jippreġudika jew jippreżenta riskju serju u gravi ta' preġudizzju għal objettiv kif imsemmi fis-subartikolu (1)(a) sa (d).

(4) Bla ħsara għad-dispożizzjonijiet tas-subartikoli (5) u (6), awtorità tal-infurzar m'għandhiex tiegħu l-mizuri fis-subartikolu (1) kemm-il darba:

(a) ma titlobx lill-Istat Membru li fih ikun stabbilit il-provditur ta' servizz biex jieħu xi mizuri u l-Istat Membru hawn qabel imsemmi ma jeħux dawk il-mizuri jew il-mizuri meħudin jitqiesu mill-awtorità tal-infurzar involuti li jkunu inadegwati; u

(b) ma tinnotifikax lill-Kummissjoni Ewropea u l-Istat Membru li fih ikun stabbilit il-provditur ta' servizz bl-intenzjoni li jkollha li tiegħu dawk il-mizuri.

A 1112

(5) Ebda haġa fis-subartikolu (4) m'għandha tolqot il-bidu ta' xi proċeduri legali jew l-investigazzjoni ta' xi reat jew ksur, ikunu kif ikunu deskritti, minn xi awtorità tal-infurzar.

(6) Jekk l-awtorità tal-infurzar ikun jidhrilha li l-kwistjoni tkun waħda ta' urġenza, hija tista' tiegħu l-mizuri taht is-subartikolu (1) mingħajr ma qabel tapplika r-reqwiziti li hemm fis-subartikolu (4).

(7) Fil-każ meta tittiehed mizura bis-saħħa tas-subartikolu (6), l-awtorità tal-infurzar għandha tinnotifika l-mizuri meħudin lill-Kummissjoni Ewropea u lill-Istat Membru involut fl-iqsar żmien possibbli u wara dan tagħti bil-miktub ir-raġunijiet għall-urġenza.

Għandha tiġi
provduta
informazzjoni
generali.

8Ċ. (1) Mingħajr preġudizzju għar-reqwiziti l-oħra ta' informazzjoni li jistgħu jiġu stabbiliti bil-liġi, provditur ta' servizz għandu jagħmel disponibbli lir-riċevitur tas-servizz u fejn adatt jew hekk mitlub, lill-awtorità tal-infurzar responsabbli skont il-liġi sabiex tiżgura konformità, inkluż fejn dan ikun japplika lir-regolatur kompetenti, b'mod u manjiera li jkunu aċċessibbli faċilment, direttament u permanentement, din l-informazzjoni li ġejja:

(a) l-isem tal-provditur tas-servizz;

(b) l-indirizz ġeografiku fejn il-provditur ta' servizz ikun stabbilit;

(ċ) id-dettalji tal-provditur tas-servizz, inkluż l-indirizz elettroniku tiegħu li jippermetti li jiġi kuntattjat b'heffa u ssir komunikazzjoni miegħu b'mod dirett u effettiv;

(d) meta l-provditur ta' servizz ikun reġistrat f'xi reġistru tal-kummerċ jew f'xi reġistru pubbliku bħal dak, ir-reġistru tal-kummerċ jew ir-reġistru l-ieħor li fih jitniżżel il-provditur ta' servizz u n-numru tar-reġistrazzjoni tiegħu, jew mezzi ta' identifikazzjoni ekwivalenti f'dak ir-reġistru;

(e) meta l-attività tkun soġġetta għal skema ta' awtorizzazzjoni, id-dettalji tal-awtorità ta' sorveljanza rilevanti;

(f) meta l-provditur ta' servizz ikun membru ta' professjoni regolata -

(i) kull korp professjonali jew istituzzjoni simili li l-provditur ta' servizz ikun registrat magħhom;

(ii) it-titolu professjonali tal-provditur u l-Istat Membru fejn dan ikun inghatalu; u

(iii) referenza għar-regoli professjonali li japplikaw fl-Istat Membru fejn il-provditur ikun stabbilit u l-mezzi ta' aċċess għalihom;

(g) meta l-provditur ta' servizz iwettaq xi attività li tkun soġġetta għat-taxxa fuq il-valur miżjud, in-numru ta' identifikazzjoni msemmi fl-Artikolu 22(1) tas-Sitt Direttiva tal-Kunsill 77/388/KEE tas-17 ta' Mejju 1977 fuq l-armonizzazzjoni tal-liġijiet tal-Istati Membri li jirrigwardaw taxxa fuq in-negozju - Sistema komuni ta' taxxa fuq il-valur miżjud: bażi ta' stima uniformi; u

(h) meta provditur ta' servizz jibgħat komunikazzjonijiet kummerċjali mhux mitluba, id-dettalji dwar kif l-utenti tas-servizz jistgħu jirregistraw l-għażla tagħhom dwar komunikazzjonijiet kummerċjali mhux mitluba, u dawk id-dettalji għandhom jintwerew b'mod prominenti fuq il-*website* tal-provditur ta' servizz u f'kull punt fejn l-utenti tas-servizz huma mitluba jagħtu informazzjoni meta jaċċedu għall-*website* tal-provditur ta' servizz.

(2) Meta l-provditur ta' servizz jirreferi għal prezzijiet, dawk il-prezzijiet għandhom ikunu indikati b'mod ċar u mhux ambigwu u, b'mod partikolari, għandhom jindikaw jekk dawn ikunux jinkludu xi taxxa, tkun kif tkun deskritta, u l-ispejjeż tal-kunsinna.

A 1114

Provdiment ta' informazzjoni f'komunikazzjonijiet kummerċjali.

8D. B'żjieda mar-rekwiziti l-oħra ta' informazzjoni li jistgħu jkunu stabbiliti bil-liġi, provditur ta' servizz għandu jiżgura li kull komunikazzjoni kummerċjali li huwa jipprovdi, li tikkostitwixxi jew tiffirma parti minn servizz għal soċjetà ta' informazzjoni għandha -

(a) tkun identifikata b'mod ċar bħala komunikazzjoni kummerċjali;

(b) tidentifika b'mod ċar il-persuna li f'isimha tkun qiegħda ssir il-komunikazzjoni kummerċjali;

(ċ) tidentifika b'mod ċar bħala tali kull offerta promozzjonali, inkluż kull skont, premju jew rigal, u tiżgura li kull kondizzjoni li għandha tithares biex tkun tista' tikkwalifika għaliha tkun aċċessibbli faċilment, u pprezentata b'mod ċar u bla ebda ambigwià;

(d) tidentifika b'mod ċar bħala tali kull kompetizzjoni jew logħba promozzjonali u tiżgura li kull kondizzjoni għall-parteciċipazzjoni tkun faċilment aċċessibbli u pprezentata b'mod ċar u bla ebda ambigwià; u

Kap. 440.

(e) mingħajr preġudizzju għad-dispożizzjonijiet tal-Att dwar il-Protezzjoni u l-Privatezza tad-*Data* u ta' kull liġi oħra li tirregola l-protezzjoni tad-*data*, tidentifika b'mod ċar id-dettalji dwar kif l-utenti tas-servizz jistgħu jirreġistraw l-għażla tagħhom fir-rigward ta' komunikazzjonijiet kummerċjali mhux mitluba, u dawk id-dettalji għandhom jintwerew b'mod prominenti kull fejn l-utenti tas-servizz jiġu mitluba jipprovdu informazzjoni.

Professjonijiet regolati.

8E. (1) Dan l-artikolu jistabbilixxi u jirregola d-dritt taħt l-Att li ssir komunikazzjoni kummerċjali li tkun tiffirma parti minn, jew tikkostitwixxi, servizz provdut minn membru ta' professjoni regolata.

(2) Minghajr preġudizzju għal kull dispożizzjoni oħra tal-Att li tippermetti xi restrizzjoni jew limitazzjoni tad-dritt li għalih japplika dan l-artikolu, korp li jkun legalment responsabbli għal xi professjoni regolata jista', fl-eżerċizzju ta' kull setgħa mogħtija skont il-liġi biex jirregola l-attivitajiet tal-membri tiegħu, jagħmel l-eżerċizzju minn membru tal-professjoni tad-dritt li dan l-artikolu jgħodd għalih, soġġett għal konformità ma' kondizzjonijiet speċifikati kif imsemmi fis-subartikolu (3).

(3) Il-kondizzjonijiet li jistgħu jiġu hekk speċifikati huma dawk li jistgħu hekk raġonevolment jitqiesu li jkunu xierqa biex jinżammu l-pożizzjoni u l-integrità tal-professjoni involuta u biex tiġi żgurata aderenza mill-membri tagħha ma' *standards* meħtieġa u, b'mod partikolari, sabiex tiġi żgurata -

(a) l-indipendenza, id-dinjità u l-unur tal-professjoni, u

(b) konformità mal-obbligi tas-sigriet professjonali u imgiba lejn il-klijenti u membri oħra tal-professjoni.

Ebda htieġa għal xi awtorizzazzjoni mogħtija minn qabel.

8F. Bla ħsara għad-dispożizzjonijiet tal-artikolu 8G, l-għoti ta' servizzi minn soċjetà ta' informazzjoni mill-provditur ta' servizz m'għandux ikun soġġett għal ebda awtorizzazzjoni li tingħata minn qabel:

Izda l-għoti ta' dawk is-servizzi minn soċjetà ta' informazzjoni għandu jkun minghajr preġudizzju għall-iskemi ta' awtorizzazzjoni li ma jkunux speċifikament u esklużivament immirati lejn servizzi minn soċjetà tal-informazzjoni, jew li jkunu koperti mill-Att biex Jirregola Komunikazzjonijiet Elettroniċi jew minn xi regolamenti magħmulin tahtu.

Kap. 399.

Htieġa ta' notifika.

8G. (1) Għall-finijiet ta' dan l-artikolu biss, "servizzi" tfisser servizzi minn soċjetà ta' informazzjoni bħal dawk li għalihom jistgħu japplikaw id-dispożizzjonijiet ta' dan l-artikolu b'konsegwenza għal kull tismija li r-regolatur kompetenti jista' jagħmel kif hemm fis-subartikolu (2).

A 1116

(2) Qabel ma jipprovdi s-servizzi, il-provditur ta' servizz għandu jimla u jipprezenta avviż lir-regolatur kompetenti li għandu jsir f'dik il-forma u jkun jinkludi dik l-informazzjoni li r-regolatur kompetenti jista' jkun jeħtieġ:

Izda dik l-informazzjoni għandha tkun limitata għal dak li jkun meħtieġ mir-regolatur kompetenti biex jidentifika lill-provditur ta' servizz, u s-servizzi li huwa jipprovdi:

Izda wkoll ir-regolatur kompetenti jista', bl-approvazzjoni bil-miktub mogħtija minn qabel mill-Ministru, isemmi lil dawk il-kategoriji l-oħra ta' provdituri ta' servizz biex dawn jimlew u jipprezentaw avviż konformi ma' dan l-artikolu hekk kif ir-regolatur kompetenti jista' minn żmien għal żmien iqis li jkun meħtieġ.

(3) Il-provditur ta' servizz għandu jinnotifika lir-regolatur kompetenti jekk dak il-provditur ta' servizz itemm milli jipprovdi s-servizz notifikat, jew jekk ikun hemm bidla fid-dettalji tan-notifika li jkun ingħata qabel. Dik in-notifika għandha ssir fi żmien tletin jum mill-waqfien tal-provvista tas-servizz jew ta' xi bidla fl-informazzjoni notifikata.

(4) Ir-regolatur kompetenti għandu jistabbilixxi u jżomm reġistru ta' dawk il-provdituri ta' servizz li jkunu nnotifikaw lir-regolatur kompetenti kif hawn f'dan l-artikolu. Il-pubbliku għandu jkollu aċċess għal dak ir-reġistru u għandu jkun fih dik l-informazzjoni li r-regolatur kompetenti jqis li tkun adatta.

Xi artikoli dwar l-attivitajiet jew oqsma elenkati fil-Hames Skeda li tinsab mal-Att ma japplikawx.

8H. L-artikoli 8A sa 8F m'għandhomx japplikaw għall-attivitajiet jew oqsma elenkati fil-paragrafi (a), (b), (ċ) u (d) tal-Hames Skeda li tinsab mal-Att."

Emenda tal-artikolu 13 tal-Att prinċipali.

7. Is-subartikolu (1) tal-artikolu 13 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

"(1) Jekk id-destinatarju ta' komunikazzjoni elettronika jkun għażel sistema ta' informazzjoni bil-għan li jiġu riċevuti komunikazzjonijiet elettronici, għaldaqstant, hliet kif mod ieħor miftiehem bejn l-orijinatur u d-destinatarju tal-komunikazzjoni elettronika jew kif xort'oħra meħtieġ taħt ir-Regolament, il-hin ta' meta tiġi riċevuta l-komunikazzjoni elettronika huwa l-hin

meta l-komunikazzjoni elettronika tidhol fis-sistema ta' informazzjoni.”.

8. Minnufih wara l-artikolu 15 tal-Att prinċipali għandu jizdied l-artikolu ġdid li ġej:

Żjieda ta' artikolu ġdid mal-Att prinċipali.

"Komunikazzjonijiet bil-posta reġistrata.

15A. Kull meta tkun teżisti xi hteġa legali li ssir komunikazzjoni permezz tal-posta reġistrata, din il-hteġa għandha titqies li tkun sodisfatta bl-użu ta' servizz ta' kunsinna reġistrat elettroniku kwalifikat mill-partijiet kollha li jippartecipaw fil-komunikazzjoni:

Izda dan l-artikolu għandu jidhol fis-seħh f'dik id-data li l-Ministru jista' espressament jistabbilixxi b'ordni fil-Gazzetta."

9. It-Taqsima V u l-artikoli 16 sa 18 tal-Att prinċipali għandhom jiġu mhassra.

Thassir tat-Taqsima V u l-artikoli 16 sa 18 tal-Att prinċipali.

10. L-artikolu 23 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 23 tal-Att prinċipali.

(a) minflok il-kliem "apparat ta' oriġinar ta' firma" jew "apparat ta' firma" kull fejn jinsabu, għandhom jidhlu l-kliem "apparat għall-holqien ta' firem elettronici jew apparat għall-holqien ta' sigill elettroniku";

(b) minflok il-kliem "provvidur ta' servizz ta' ċertifikazzjoni ta' firma" kull fejn jinsabu, għandhom jidhlu l-kliem "provvidur ta' servizz ta' ċertifikat"; u

(ċ) minflok il-kliem "firma elettronika" kull fejn jinsabu, għandhom jidhlu l-kliem "firma elettronika jew sigill elettroniku".

11. Minnufih wara l-artikolu 23 tal-Att prinċipali għandhom jizdiedu l-artikoli ġodda li ġejjin:

Żjieda ta' artikoli ġodda mal-Att prinċipali.

"Korp ta' sorveljanza għall-iskopijiet tar-Regolament.

23A. (1) Ir-regolatur kompetenti għandu jkun responsabbli għall-kompiti superviżorji dikjarati fir-Regolament u meta jagħmel hekk huwa għandu b'mod partikolari:

A 1118

(a) jissorvelja provdituri ta' servizzi fiduċjarji kwalifikati stabbiliti f'Malta biex jiżguraw permezz ta' attivitajiet superviżorji *ex ante* u *ex post*, li daww il-provdituri ta' servizzi fiduċjarji kwalifikati u servizzi fiduċjarji kwalifikati li jkunu jipprovdu, jissodisfaw ir-rekwiziti stabbiliti fir-Regolament;

(b) jiehu azzjoni jekk ikun meħtieġ, fir-rigward tal-provdituri ta' servizzi fiduċjarji mhux kwalifikati stabbiliti f'Malta permezz ta' attivitajiet superviżorji *ex post*, meta jkunu informati li daww il-provdituri ta' servizzi fiduċjarji mhux kwalifikati jew is-servizzi fiduċjarji li jkunu qegħdin jipprovdu ma jkunux allegatament jissodisfaw ir-rekwiziti stabbiliti fir-Regolament.

(2) Mingħajr preġudizzju għall-generalità tal-kompiti oneruzi fuq ir-regolatur kompetenti kif imsemmija fis-subartikolu (1), ir-regolatur kompetenti għandu jkun responsabbli għal dan li ġej:

(a) li jikkopera ma' korpi oħra superviżorji u jipprovdihom għajnuna kif hemm fl-Artikolu 18 tar-Regolament;

(b) li janalizza r-rapporti dwar il-valutazzjoni tal-konformità msemmija fl-Artikoli 20(1) u 21(1) tar-Regolament;

(ċ) li jinforma lil korpi superviżorji oħra u lill-pubbliku dwar ksur tas-sigurtà jew nuqqas ta' integrità kif hemm fl-Artikolu 19(2) tar-Regolament;

(d) li jirrapporta lill-Kummissjoni Ewropea dwar l-attivitajiet ewlenin tagħha kif hemm fil-paragrafu 6 tal-Artikolu 17 tar-Regolament;

(e) li jwettaq awditjar jew li jitlob lil korp ta' valutazzjoni ta' konformità biex iwettaq valutazzjoni ta' konformità tal-provdituri tas-servizzi fiduċjarji kwalifikati kif hemm fl-Artikolu 20(2) tar-Regolament;

(f) li jikkopera mal-Uffiċċju tal-Kummissarju għall-Infurmazzjoni u l-Protezzjoni tad-*Data* f'Malta, b'mod partikolari, billi jinforma lil dak l-Uffiċċju mingħajr ebda dewmien, dwar ir-riżultati tal-awditjar tal-provdituri ta' servizzi fiduċjarji kwalifikati, meta fil-fehma tar-regolatur kompetenti seta' kien li nkisru ir-regoli ta' protezzjoni tad-*data* personali;

(g) li jagħti status kwalifikat lil provdituri ta' servizzi fiduċjarji u lis-servizzi li dawn jipprovdu u li jirtira dan l-istatus kif hemm fl-Artikoli 20 u 21 tar-Regolament;

(h) li jinforma lill-korp responsabbli għal-lista affidabbli nazzjonali msemmija fl-Artikolu 22(3) tar-Regolament bid-deċizjonijiet tiegħu li jagħti jew jirtira status kwalifikat:

Izda dak ir-rekwiżit ma għandux ikun japplika jekk ir-regolatur kompetenti jkun iwettaq ukoll il-kompiti tal-entità msemmija f'dan il-paragrafu;

(i) li jivverifika l-eżistenza u l-applikazzjoni korretta tad-dispożizzjonijiet dwar il-pjanijiet ta' terminazzjoni f'każijiet fejn il-provditur ta' servizzi fiduċjarji kwalifikati jwaqqaf l-attivitajiet tiegħu, inkluż kif l-infurmazzjoni tinzamm aċċessibbli kif hemm fil-punt (h) tal-Artikolu 24(2) tar-Regolament;

(j) li jesigi li l-provdituri ta' servizzi fiduċjarji jirrimedjaw kwalunkwe nuqqas li ma jissodisfax ir-rekwiżiti stabbiliti fir-Regolament;

(k) li jistabbilixxi, iżomm u jippubblika listi affidabbli kif hemm fl-Artikoli 22(1) u 22(2) tar-Regolament, u jinnotifika lill-Kummissjoni f'dak li għandu x'jaqsam ma' dan kif hemm fl-Artikolu 22(3) tar-Regolament; u

(l) li jinnotifika lill-Kummissjoni dwar kull lista kif hemm fl-Artikolu 31(1) u 39(3) tar-Regolament.

A 1120

Nuqqas ta' konformità mar-Regolament.

23B. Kemm-il darba ma jigix dikjarat mod ieħor f'dan l-Att meta dan ikun japplika, kull nuqqas ta' konformità mad-dispożizzjonijiet ta' dan l-Att jew tar-Regolament għandu jikkostitwixxi ksur ta' dan l-Att, u għandu jkun ittrattat kif xieraq mir-regolatur kompetenti li għandu bil-mod kif iqis li jkun xieraq jieħu l-miżuri regolatorji meħtieġa hekk kif jagħtuh il-poteri tiegħu bil-liġi.

Nuqqas ta' konformità mal-Att u s-setgħat li għandu regolatur kompetenti.

23Ċ. Kemm-il darba ma jigix dikjarat mod ieħor fl-Att, il-ksur ta' xi dispożizzjoni tal-Att għandhom japplikaw għalih dawk is-sanzjonijiet li r-regolatur kompetenti għandu l-poter bil-liġi li jimponi."

Sostituzzjoni tal-artikolu 24 tal-Att prinċipali.

12. L-artikolu 24 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġejj:

"24. Kull persuna li tikser l-artikoli 20, 22 u 23 tal-Att, jew l-Artikoli 19(2), 20(1), 21(1), 21(3), 23 u 24 tar-Regolament, tkun haġta ta' reat u teħel, meta tinsab haġta, multa ta' mhux iżjed minn mitejn u hamsin elf euro (€250,000) jew priġunerija għal żmien mhux iżjed minn sentejn jew dik il-multa u priġunerija flimkien, u fil-każ ta' reat kontinwu multa ta' mhux iżjed minn elfejn u hames mitt euro (€2,500) għal kull ġurnata li matulha jkompli r-reat:

Iżda meta xi proċedimenti jinbdeu mill-Kummissarju tal-Pulizija taħt dan is-subartikolu, il-Kummissarju tal-Pulizija għandu javża lir-regolatur kompetenti bil-miktub li jkunu nbdeu dawk il-proċedimenti u bl-eżitu finali tagħhom."

Żjieda ta' artikoli godda mal-Att prinċipali.

13. Minnufih wara l-artikolu 24 tal-Att prinċipali għandhom jiżdiedu l-artikoli godda li ġejjin:

"Tilwimiet bejn provditur ta' servizz u konsumatur.

24A. (1) Meta tinqala' tilwima tkun kif tkun deskritta bejn provditur ta' servizz u konsumatur wara lment minn konsumatur li jallega ksur tal-Att jew tar-Regolament kif dawn huma nfurzati mir-regolatur kompetenti, kull parti f'dik it-tilwima tista' tirreferi t-tilwima lir-regolatur kompetenti:

Iżda meta jkun qed jagħmel l-ilment tiegħu, il-konsumatur għandu juri *prima facie* illi huwa jkun ġie affettwat b'dan l-att jew ommissjoni tal-provditur ta' servizz li tat lok għall-ilment.

(2) Meta jirċievi xi referenza kif hawn qabel imsemmi, jew inkella meta jsir jaf b'xi tilwima bhal dik li r-regolatur kompetenti jkun tal-fehma li għandhom jiġu investigati, ir-regolatur kompetenti għandu jinnotifika lill-partijiet kollha fit-tilwima li l-kwistjoni tkun qieghda tiġi investigata. Meta jkun qed jagħmel dan, ir-regolatur kompetenti għandu jirregola l-proċedura tiegħu stess, u dik il-proċedura għandha, sakemm ikun raġonevolment possibbli, tkun waħda trasparenti, sempliċi, mhux daqstant ta' spiża u li twassal għal soluzzjoni mgħaġġla u ġusta tat-tilwima, u għandha toffri lill-partijiet kollha fit-tilwima opportunità raġonevoli li jagħmlu s-sottomissjonijiet tagħhom u li jgħibu kull informazzjoni rilevanti:

Iżda r-regolatur kompetenti jista' jiddeċiedi li ma tinbediex xi investigazzjoni kif hawn f'dan l-artikolu meta jkun sodisfatt li l-partijiet ikollhom disponibbli mezzi oħra kif jistgħu jirrisolvu l-kwistjoni b'mod tempestiv, jew jekk ikunu nbew proċeduri legali dwar it-tilwima minn xi parti fit-tilwima, jew jekk xi awtorità pubblika oħra tkun diġà qieghda tinvestiga l-istess tilwima.

(3) Meta r-regolatur kompetenti jkun qieghed jirrisolvi xi tilwima li titressaq quddiemu taht dan l-artikolu, huwa jista' joħroġ direttivi lill-provditur ta' servizz li bihom jehtieg lil dak il-provditur ta' servizz iħares kull miżura li r-regolatur kompetenti jista' jispeċifika biex it-tilwima tkun tista' tiġi riżolta. Dawk id-direttivi jistgħu, wara li jitqies kif din għandha tinqata' u kull haġa rilevanti oħra, ikunu jinkludu ordni biex isir ir-rimborż ta' hlasijiet riċevuti jew biex isiru hlasijiet ta' kumpens. Dawk il-hlasijiet jistgħu jinkludu wkoll l-ispejjeż kollha jew sehem minnhom ta' kull parti li jkollha x'taqsam mal-ingaġġ ta' avukat u, jew ta' konsulent tekniku dwar sottomissjonijiet li jkollhom x'jaqsmu mal-kwistjoni.

(4) Ir-regolatur kompetenti għandu jagħmel pubblikament disponibbli dawk il-proċeduri amministrattivi li huwa jista' minn żmien għal żmien jistabbilixxi dwar kif jitmexxew t-tilwimiet imressqa quddiemu taħt dan l-artikolu.

(5) Id-dispożizzjonijiet ta' dan l-artikolu għandhom ikunu mingħajr preġudizzju għad-dritt tal-konsumatur li jkun jista' jirrikorri, kif hemm fil-liġi Maltija, għand kull korp iehor li jkollu s-setgħa li jirrisolvi tilwimiet bħal dawk u, jew għal kull proċess ta' rizzoluzzjoni tat-tilwim barra mill-Qorti, ikunu kif ikunu deskritti.

(6) Meta jaqta' deċiżjoni taħt dan l-artikolu, ir-regolatur kompetenti għandu jiddikjara r-raġunijiet li fuqhom din tkun ibbażata, u għandu, bla ħsara għal dawk ir-rekwiżiti ta' kunfidenzjalità kummerċjali li jistgħu jidhrulu xierqa, jinnotifika lill-partijiet fit-tilwima billi jgħaddilhom kopja tad-deċiżjoni.

(7) Ir-regolatur kompetenti għandu jipubblika avviż dwar deċiżjoni mogħtija taħt dan l-artikolu u għandu jiddikjara minn fejn ikunu jistgħu jinkisbu kopji ta' jew informazzjoni dwar id-deċiżjoni.

Hruġ ta' ordni ta' konformità.

24B. (1) Meta r-regolatur kompetenti jara li jkun raġonevolment xieraq jew meħtieġ għall-protezzjoni tal-konsumaturi, dan jista', b'inizjattiva tiegħu nnifsu jew wara li hekk jintalab bil-miktub minn xi entità kwalifikata, johroġ ordni ta' konformità kontra provditur ta' servizz jew kull persuna oħra għal xi għan wiehed jew aktar minn dawn li ġejjin:

(a) billi jeħtieġ lil xi persuna tiegħu l-miżuri speċifikati fl-ordni ta' konformità, fiż-żmien speċifikat fl-ordni sabiex jiġi żgurat li d-dispożizzjonijiet tal-Att u, jew tar-Regolament jiġu mharsa; jew

(b) billi jeħtieġ lil xi persuna li tieqaf u ttemm milli tikkommetti xi ksur tal-Att u, jew tar-Regolament.

(2) Ir-regolatur kompetenti għandu, meta jkun qed johroġ ordni ta' konformità taħt dan l-artikolu:

(a) jinnotifika b'kopja tal-ordni ta' konformità lil kull persuna li ssir l-ordni kontriha;

(b) jinkludi mal-ordni ta' konformità, informazzjoni dwar id-dritt li l-ordni tiġi kkontestata quddiem it-Tribunal; u

(ċ) jiddikjara fil-qosor xi jkunu r-raġunijiet għall-hruġ tal-ordni ta' konformità, u dawk ir-raġunijiet għandhom jiġu notifikati lil kull persuna li kontriha tinhareġ l-ordni u, jekk ikun hemm, lill-entità kwalifikanti li tkun talbet li tinhareġ l-ordni.

(3) M'għandhomx jinharġu mit-Tribunal jew minn xi Qorti ebda mandat kawtelatorju jew xi ordni oħra bħalu taht din jew kull liġi oħra li tkun iżzomm jew tirrestringi lir-regolatur kompetenti milli johroġ ordni ta' konformità taht dan l-Att.

(4) Ordni ta' konformità mahruġa mir-regolatur kompetenti għandha tidhol fis-seħh b'effett immedjat, sakemm dik l-ordni ma tkunx tipprovdi xort' oħra.

Rikors għall-hruġ ta' ordni ta' konformità.

24Ċ. (1) Meta entità kwalifikata tkun trid tikseb ordni ta' konformità, hija għandha tippreżenta rikors bil-miktub lir-regolatur kompetenti li bih turi lir-regolatur kompetenti li tkun ippruvat tikseb il-waqfien tal-ksur f'konsultazzjoni jew mal-parti li tkun qiegħda titlob l-ordni kontriha jew kemm ma' dik il-parti kemm ukoll ma' xi entità kwalifikata oħra tal-Istat Membru fejn l-ordni jew xi inġunzjoni bħalha jkunu qegħdin jintalbu:

Iżda r-regolatur kompetenti għandu jikkunsidra biss rikors bil-miktub jekk l-entità kwalifikata turi għas-sodisfazzjon tar-regolatur kompetenti li l-waqfien tal-ksur ma jkunx sar fi żmien għoxrin jum wara li jkun irċieva t-talba għall-konsultazzjoni.

(2) Meta l-entità kwalifikata tkun minn Stat Membru iehor, ir-regolatur kompetenti għandu jittratta l-lista ta' entitajiet kwalifikati pubblikata mill-Kummissjoni bħala prova konkluziva tal-kapaċità legali li l-entità legali jkollha li tippreżenta dak ir-rikors bil-miktub f'Malta.

(3) Ir-regolatur kompetenti għandu, fuq talba ta' entità kwalifikata minn Malta, jikkomunika lill-Kummissjoni l-isem u l-għanijiet ta' dik l-entità u li dik l-entità kwalifikata għandha tizdied mal-lista ta' entitajiet kwalifikati sabiex tista' tisewwa l-ħsara ta' ksur li jseħh fi Stati Membri oħra.

(4) Qabel ma jgħaddi biex johroġ ordni ta' konformità taħt l-artikolu 24B, ir-regolatur kompetenti għandu, jekk iqis li dan ikun possibbli u raġonevoli li jagħmel hekk, jara kif l-ewwel jikseb konformità volontarja mill-provditur ta' servizz u minn persuni oħra involuti, kif hawn fl-Att u, jew fir-Regolament jew f'kull liġi oħra dwar il-protezzjoni li tingħata lill-konsumatur.

Id-diskrezzjoni li għandu regolatur kompetenti li johroġ ordni ta' konformità.

24D. (1) Ikun fid-diskrezzjoni tar-regolatur kompetenti jekk għandux johroġ jew ma johroġx l-ordni ta' konformità wara li tkun saritlu talba bil-miktub minn entità kwalifikata kif hemm fl-artikolu 24B.

(2) Jekk ir-regolatur kompetenti jiddeċiedi li ma johroġx l-ordni ta' konformità wara li jkun sarlu rikors minn entità kwalifikata, ir-regolatur kompetenti għandu, fi żmien jumejn mid-data tad-deċiżjoni tiegħu li ma johroġx ordni kif mitlub, jinnotifika bil-miktub lill-entità kwalifikata u lill-persuni li kontribom ikun mitlub l-ordni ta' konformità, bid-deċiżjoni tiegħu filwaqt li jiddikjara r-raġunijiet tiegħu għal dan.

(3) Entità kwalifikata tista' fi żmien għoxrin ġurnata minn meta tgħarraf lir-regolatur kompetenti bil-miktub dwar talba għall-ħruġ ta' ordni ta' konformità, tagħmel rikors quddiem it-Tribunal fejn titlob lit-Tribunal biex jordna lir-regolatur kompetenti biex johroġ ordni ta' konformità taħt l-artikolu 24B. Il-persuna li kontriha jintalab l-ordni u r-regolatur kompetenti għandhom ikunu partijiet fil-proċedimenti quddiem it-Tribunal, u jkun id-dmir tal-entità kwalifikata li tinnotifika b'dan kollu lil dawk il-partijiet l-oħra.

Appelli minn ordni ta' konformità.

24E. (1) Persuna li kontriha tkun saret ordni ta' konformità tista', fi żmien għoxrin gurnata, minn meta tiġi notifikata bl-ordni ta' konformità, tappella bil-miktub quddiem it-Tribunal għar-revoka jew emenda tal-ordni ta' konformità, filwaqt li tagħti r-raġunijiet tagħha fid-dettal għal dik it-talba. Ir-regolatur kompetenti u meta jkun adatt kull entità kwalifikanti li setgħet talbet li jsir il-ħruġ tal-ordni ta' konformità, għandhom jiġu notifikati bl-appell u għandu jkollhom għoxrin gurnata mid-data tan-notifika tal-appell biex iwieġbu fihom.

(2) It-Tribunal jista' jikkonferma, jibdel jew jikkancella l-ordni ta' konformità hekk kif jidhirlu xieraq, iżda meta jagħmel dan it-Tribunal għandu fil-kazijiet kollha jiddikjara r-raġunijiet tiegħu.

(3) Meta jsir appell taht dan l-artikolu, l-ordni ta' konformità għandu jibqa' fis-sehħ sakemm it-Tribunal, fuq it-talba tal-parti li tkun qiegħda tikkontesta l-ordni, speċifikament jordna li l-ordni ta' konformità għandha tiġi sospiza sal-ezitu tal-appell, bla ħsara għal dawk il-kondizzjonijiet u emendi għall-ordni hekk kif jista' jistabbilixxi t-Tribunal:

Izda meta tkun qiegħda tiġi deċiża xi talba bħal dik għas-suspensjoni ta' ordni ta' konformità, it-Tribunal għandu jagħti r-raġuni tiegħu bil-miktub dwar kif ikun wasal għal dik id-deċiżjoni.

Il-kazijiet jinstemgħu u jiġu deċiżi b'urgenza.

24F. (1) L-appelli li jsiru taht l-artikoli 24D u 24E għandhom jinstemgħu u jiġu deċiżi mit-Tribunal b'urgenza u kemm jista' jkun malajr.

(2) It-Tribunal, fuq talba ta' xi waħda mill-partijiet fil-proċedimenti quddiemu, jista' jqassar kull terminu stabbilit taht l-Att dwar it-tmexxija tal-appell li jkun qed jittratta:

Izda meta jagħmel dan, it-Tribunal għandu jagħti r-raġunijiet tiegħu bil-miktub.

M'hemm ebda hteġa ta' prova ta' telf attwali.

24G. Meta jkun qed johroġ ordni ta' konformità taht l-Att, ir-regolatur kompetenti m'għandu jkun meħtieġ li jgħib ebda prova:

(a) ta' xi telf jew ħsara attwali; jew

A 1126

(b) ta' negliġenza, traskuraġni jew
 htija attwali mill-provditur ta' servizz jew ta'
 persuna li ssir l-ordni kontriha.

It-tehdid ta'
 miżuri oħra
 biex tiġi
 żgurata
 konformità.

24H. (1) Mingħajr preġudizzju għal kull
 setgħa oħra li għandu bil-liġi, ir-regolatur
 kompetenti jista' jordna, bil-miktub, lil kull
 persuna biex ittemm u tieqaf milli tagħmel xi ksur
 transkonfini u, jew milli tagħxi bi ksur ta' xi
 dispozizzjoni tal-Att, u, jew tar-Regolament.

(2) Ir-regolatur kompetenti jista', meta
 johroġ ordni taht is-subartikolu (1), jehtieg lill-
 persuna involuta biex tagħtih garanzija bil-miktub
 li biha dik il-persuna taqbel li għandha ttemm u
 tieqaf minn kull ksur bħal dak, u dik il-garanzija
 għandha tkun tinkludi kwalunkwe kondizzjoni li r-
 regolatur kompetenti jista' jqis li tkun meħtieġa
 fiċ-ċirkostanzi.

(3) Persuna li tagħmel garanzija kif hawn
 f'dan l-artikolu u li wara dan tagħxi bi ksur ta'
 kwalunkwe kondizzjoni msemmija fil-garanzija,
 tista' tiġi imposta fuqha multa amministrattiva
 mir-regolatur kompetenti ta' mhux iżjed mis-
 somma ta' ħamsa u għoxrin elf euro (€25,000) u,
 jew ħames mitt euro (€500) għal kull ġurnata li
 matulha tibqa' ma tikkonformax ruħha mal-
 garanzija:

Izda meta tiġi imposta multa taht dan is-
 subartikolu, dan għandu jkun mingħajr
 preġudizzju għal kull sanzjoni oħra tkun kif tkun
 deskritta li r-regolatur kompetenti jista' jimponi
 bil-liġi.

Ir-regolatur
 kompetenti
 jista' jitlob li
 ssir
 pubblikazzjon
 i.

24I. (1) Ir-regolatur kompetenti jista',
 biex jinforma sew lill-pubbliku, jehtieg lill-
 provditur ta' servizz jew lill-persuna li kontriha
 tkun inħarġet l-ordni ta' konformità, għas-ispejjeż
 tal-aħħar imsemmi jikkomunika bi kwalunkwe
 mod li r-regolatur kompetenti jqis li jkun adatt,
 inkluża l-pubblikazzjoni f'mill-inqas żewġ
 gazzetti ta' kuljum:

(a) kopja sħiħa jew biss f'parti -

(i) ta' ordni ta' konformità
 magħmula taht l-artikolu 24B; u, jew

(ii) kopja ta' garanzija mogħtija taħt l-artikolu 24H jew estratt ta' xi ordni bħal dik u, jew ta' xi garanzija bħal dik; u, jew

(b) dikjarazzjoni korrettiva dwar xi ksur tal-Att u, jew tar-Regolament.

(2) Kull komunikazzjoni meħtieġa kif hemm fis-subartikolu (1) għandha ssir fi żmien sebat ijiem minn meta tasal in-notifika maħruġa mir-regolatur kompetenti li fiha jeħtieġ lill-provditur ta' servizz jew lill-persuna involuta tagħmel xi komunikazzjoni bħal dik. Meta daww il-komunikazzjonijiet ma jsirux kif imsemmi qabel, ir-regolatur kompetenti jista' jgħaddi biex joħroġ il-komunikazzjoni huwa nnifsu, u l-ispejjeż kollha li jintnefqu mir-regolatur kompetenti biex joħroġ xi komunikazzjoni magħmula minnu kif hawn fid-dispożizzjonijiet ta' dan l-artikolu għandhom jiġu rkuprati bħala dejn ċivili mill-persuna li kontriha jkun inhareġ l-ordni ta' konformità.

Id-dritt li jsir appell.

24J. Kull min iħoss ruħu aggravat b'deċiżjoni, tkun kif tkun deskritta, meħuda mir-regolatur kompetenti kif hawn fl-Att u li jkollu interess legali li jikkontesta dik id-deċiżjoni, jista' jappella quddiem it-Tribunal:

Izda fil-każ tal-kontestazzjoni ta' kwalunkwe materja dwar il-ħruġ ta' ordni ta' konformità kif previst f'dan l-Att, għandhom japplikaw il-proċeduri dikjarati fl-artikoli 24D u 24E.

Konsultazzjoni li ssir ma' u minn awtoritajiet ta' infurzar oħra.

24K. (1) Ir-regolatur kompetenti jista' jitlob il-parir ta', u meta jkun xieraq għandu jikkonsulta ma', kull awtorità ta' infurzar oħra fl-eżerċizzju ta' xi waħda mill-funzjonijiet tiegħu taħt l-Att u, jew ir-Regolament.

(2) Meta tkun qed taġixxi kif hemm f'xi dispożizzjoni ta' dan l-Att, awtorità tal-infurzar għandha, fil-każijiet kollha, l-ewwel tikkonsulta u taġixxi f'koordinament mar-regolatur kompetenti."

14. L-artikolu 25 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 25 tal-Att prinċipali.

A 1128

(a) is-subartikolu (1) tiegħu għandu jiġi emendat kif ġej:

(i) minflok il-kliem "dwar kull haġa li jkollha x'taqsam mal-kummerċ elettroniku" għandhom jidhlu l-kliem "dwar kull haġa li jkollha x'taqsam mal-kummerċ elettroniku tkun kif tkun deskritta, identifikazzjoni elettronika, servizzi fiduċjarji, transazzjonijiet elettroniċi, u kull haġa oħra li tista' tkun komplimentari jew relatata ma' dawn,";

(ii) fis-subparagrafu (v) tal-paragrafu (b) tiegħu, minflok il-kelma "firem" għandhom jidhlu l-kliem "servizzi fiduċjarji";

(iii) il-paragrafi (ċ) u (d) tiegħu għandhom jiġi mhassra;

(iv) fis-subparagrafu (i) tal-proviso għall-paragrafu (f) tiegħu, minflok il-kliem "l-ammont ta' tlieta u għoxrin elf u mitejn u disgħin euro (23,290) għal kull reat u ta' elfejn tliet mija u hamsa u għoxrin euro (2,325)" għandhom jidhlu l-kliem "l-ammont ta' hamsa u għoxrin elf euro (€25,000) għal kull reat u ta' elfejn u hames mitt euro (€2,500)";

(v) fis-subparagrafu (ii) tal-proviso għall-paragrafu (f) tiegħu, minflok il-kliem "massimu ta' mija u sittax-il elf u erba' mija u hamsa u sittin euro (116,465) u ta' haxx-il elf u sitt mija u hamsa u erbgħin euro (11,645)" għandhom jidhlu l-kliem "massimu ta' mija u hamsa u għoxrin elf euro (€125,000) u tmax-il elf u hames mitt euro (€12,500)";

(vi) fil-paragrafu (h) tiegħu, minflok il-kliem "regolat b'dan l-Att jew tahtu." għandhom jidhlu l-kliem "regolat b'dan l-Att jew tahtu,"; u

(vii) minnufih wara l-paragrafu (h) tiegħu għandhom jizdiedu l-paragrafi ġodda li ġejjin:

"(i) id-definizzjoni tar-rekwiziti u l-proċeduri għall-ħatra ta' korpi pubbliċi jew privati adatti awtorizzati li jistmaw il-konformità ta' apparat kwalifikat għall-ħolqien ta' firem elettroniċi u mezzi ta' ħolqien ta' sigill elettroniku kwalifikat mar-rekwiziti tar-Regolament, kif ukoll il-ħatra nnifisha ta' dawk il-korpi; u

(j) kull dritt u, jew hlas, ikunu kif ikunu deskritti, li jistgħu jkunu pagabbli fir-rigward ta' kwalunkwe materja

regolata minn jew taht dan l-Att jew minn jew taht ir-Regolament."; u

(b) is-subartikolu (3) tiegħu għandu jithassar.

15. Mad-dhul fis-sehħ tal-artikoli 2, 3, 6, 13 u 17 ta' dan l-Att, ir-Regolamenti dwar il-Komunikazzjonijiet u Transazzjonijiet Elettroniċi (Ġenerali) għandhom jiġu mħassra.

Thassir tar-Regolamenti dwar il-Komunikazzjonijiet u Transazzjonijiet Elettroniċi (Ġenerali). L.S. 426.02.

16. Minnufih wara l-paragrafu (j) tal-Ewwel Skeda li tinsab mal-Att prinċipali għandu jiżdied il-paragrafu ġdid li ġej:

Emenda tal-Ewwel Skeda li tinsab mal-Att prinċipali.

"(j) fir-rigward ta' professjoni regolata;

- kull korp professjonali jew istituzzjoni simili li l-provditur ta' servizz ikun registrat magħha;

- it-titolu professjonali u l-Istat Membru fejn dan ikun inġhata; u

- referenza għar-regoli professjonali li japplikaw f'dak l-Istat Membru ta' stabbiliment u l-mezzi biex isir aċċess għalihom."

17. It-Tieni, it-Tielet u r-Raba' Skedi li jinsabu mal-Att prinċipali għandhom jiġu mħassra.

Thassir tat-Tieni, it-Tielet u r-Raba' Skedi li jinsabu mal-Att prinċipali.

18. Minnufih wara l-Hames Skeda li tinsab mal-Att prinċipali għandhom jiżdiedu l-Iskedi ġodda li ġejjin:

Żjieda ta' Skedi ġodda mal-Att prinċipali.

"IS-SITT SKEDA

(Artikolu 2)

Nomina tar-regolatur kompetenti kif hemm fl-artikolu 2

Kif hemm fid-dispożizzjonijiet tal-artikolu 2 fil-kuntest tat-tifsira "regolatur kompetenti", din l-awtorità pubblika li ġejja qieghda tiġi nominata bhala r-regolatur kompetenti għall-finijiet kollha tal-Att u tar-Regolament:

L-Awtorità ta' Malta dwar il-Komunikazzjoni:

Izda kemm-il darba ma jingħadx mod ieħor fl-Att dwar l-Awtorità ta' Malta dwar il-Komunikazzjoni (Kap. 418), id-dispożizzjonijiet tat-Taqsima VI intitolata "Infurzar u Sanzjonijiet" ta' dak l-Att għandhom japplikaw fir-rigward tal-

eżerċizzju mill-Awtorità ta' Malta dwar il-Komunikazzjoni ta' kull funzjoni regolatorja tagħha bhala r-regolatur kompetenti, b'mod partikolari meta l-Awtorità ta' Malta dwar il-Komunikazzjoni bhala r-regolatur kompetenti tikkunsidra li xi ksur tal-Att jew tar-Regolament jistgħu jwasslu biex tiġi imposta xi sanzjoni kif provdut fl-artikolu 31 tal-Att dwar l-Awtorità ta' Malta dwar il-Komunikazzjoni (Kap. 418).

IS-SEBA' SKEDA

(Artikolu 8A)

Oqsma esklużi kif hemm fl-artikolu 8A(4)

1. Safejn dawn il-liġijiet nazzjonali jimplimentaw id-Direttivi msemmija fl-Anness mad-Direttiva dwar il-Kummerċ Elettroniku jiġifieri:

(a) l-Att dwar id-Drittijiet tal-Awtur (Kap. 415), u l-Att dwar il-Privattivi Industrijali u d-Disinni (Kap. 417) safejn u sakemm dawn il-liġijiet ikollhom x'jaqsmu mad-drittijiet tal-awtur, drittijiet viċini, id-drittijiet imsemmija fid-Direttiva 87/54/KEE u d-Direttiva 96/9/KE kif ukoll id-drittijiet ta' proprjetà industrijali;

(b) l-artikolu 5 tal-Att dwar il-Kummerċ Bankarju (Kap. 371) safejn u sakemm dan jirrigwarda l-ħruġ ta' flus elettroniku minn istituzzjonijiet li dwarhom l-Istati Membri jkunu applikaw xi waħda mid-derogi li hemm provdut dwarhom fl-Artikolu 8(1) tad-Direttiva 2000/46/KE;

(ċ) ir-Regolamenti dwar Impriżi għal Investiment Kollettiv f'Titoli Trasferibbli u Kumpanniji li Jimmaniġġaw (L.S. 370.11);

(d) ir-Regolamenti dwar European Passport Rights for Insurance and Reinsurance Undertakings (L.S. 403.14).

2. Il-libertà li għandhom il-partijiet f'kuntratt li jagħzlu l-liġi li tkun tapplika.

3. Obbligi kuntrattwali dwar kuntratti mal-konsumatur.

4. Il-validità formali ta' kuntratti li joħolqu jew jittrasferixxu drittijiet fi proprjetà immobbli meta kuntratti bħal dawk ikunu soġġetti għal rekwiżiti formali u mandatorji tal-liġi tal-Istat Membru fejn tkun tinsab il-proprjetà immobbli.

5. Kemm huma permissibli dawk il-komunikazzjonijiet kummerċjali li ma jkunux ġew mitlubin permezz tal-posta elettronika."

19. Il-liġijiet fl-Ewwel Kolonna tal-Iskeda li tinsab ma' dan l-Att għandu jkollhom effett soġġetti għall-emendi li jidhru biswathom fit-Tieni Kolonna tal-Iskeda msemmija.

Emendi għal liġijiet oħra.

SKEDA

Emendi għal-Liġijiet

L-Ewwel Kolonna	It-Tieni Kolonna
Liġi	Emendi magħmulin
L-Att dwar Artikolu 2 ir-Regolament ta' Ċerti Xoghlijiet f'Utilitajiet u Servizzi. Kap. 81	1. Fl-artikolu 2 tiegħu t-tifsira " "regolatur kompetenti ta' infrastruttura" jew "regolaturi kompetenti ta' infrastruttura" " għandha tiġi sostitwita b'dan li ġej: " "regolatur kompetenti ta' infrastruttura" jew "regolaturi kompetenti ta' infrastruttura" tfisser dak il-korp jew korpi tas-settur pubbliku responsabbli għar-regolament ta' dik l-infrastruttura li jistgħu jkunu elenkati fl-Ewwel Skeda, liema Skeda tista' minn żmien għal żmien tiġi emendata mill-Ministru responsabbli għall-infrastruttura permezz ta' avviż fil-Gazzetta;"
Artikolu 4A	2. L-artikolu 4A tiegħu għandu jiġi emendat kif ġej: (a) fis-subartikolu (2) tiegħu, minflok il-kliem "li ssirlu talba bil-miktub minn regolatur kompetenti tal-infrastruttura", u l-kliem "jikkonsulta bil-miktub lir-regolatur jew regolaturi kompetenti hekk kif jista' jkun il-każ:" għandhom jidhlu rispettivament il-kliem "li ssirlu talba bil-miktub minn regolatur kompetenti ta' utilitajiet" u l-kliem "jikkonsulta bil-miktub lir-regolatur jew regolaturi kompetenti ta' utilitajiet hekk kif jista' jkun il-każ:"; u

- (b) fis-subartikolu (4) tiegħu, minflok il-kliem "b'koordinament mar-regolatur jew regolaturi kompetenti ta' infrastruttura" għandhom jidhlu l-kliem "b'koordinament mar-regolatur jew regolaturi kompetenti ta' utilitajiet".
- Artikolu 4Ċ 3. Fl-artikolu 4Ċ tiegħu, minflok il-kliem "wara konsultazzjoni bil-miktub mar-regolatur jew regolaturi kompetenti ta' infrastruttura," għandhom jidhlu l-kliem "wara konsultazzjoni bil-miktub mar-regolatur jew regolaturi kompetenti ta' utilitajiet,".
- Artikolu 4E 4. Fl-artikolu 4E tiegħu, minflok il-kliem "Persuna jew regolatur kompetenti ta' infrastruttura", u l-kliem "Izda wkoll, meta jkun hekk japplika, ir-regolatur kompetenti tal-infrastruttura" għandhom jidhlu rispettivament il-kliem "Persuna jew regolatur kompetenti ta' utilitajiet", u l-kliem "Izda wkoll, meta jkun hekk japplika, ir-regolatur kompetenti ta' utilitajiet".
- Artikolu 6 5. Fl-artikolu 6(3)(b) tiegħu, minflok il-kliem "ma' kull min ir-regolatur kompetenti tal-utilitajiet" għandhom jidhlu l-kliem "ma' kull min ir-regolatur kompetenti tal-infrastruttura".
- Artikolu 14 6. Fis-subartikolu (4) tal-artikolu 14 tiegħu, minflok il-kliem "għaldaqstant kull parti tista' tirreġistra tilwima mal-Bord għas-Soluzzjoni ta' Tilwim u dik it-tilwima għandha tiġi ppreżentata bil-miktub lill-Bord minn meta jiskadi l-perjodu ta' xahrejn imsemmi f'dan is-subartikolu." għandhom jidhlu l-kliem "għaldaqstant kull parti tista' tirreġistra tilwima mal-Bord għas-Soluzzjoni ta' Tilwim meta jiskadi l-perjodu ta' xahrejn imsemmi f'dan is-subartikolu.".
- Artikolu 36 7. Fl-artikolu 36(2) tiegħu, minflok il-kliem "impatt hazin fuq il-provediment ta' servizzi ta' komunikazzjonijiet elettronici f'Malta." għandhom jidhlu l-kliem "impatt hazin fuq il-provdiment ta' servizzi u, jew *networks* ta' komunikazzjonijiet elettronici f'Malta.".
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Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru 412 tal-4 ta' Lulju, 2016.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

A 1134

I assent.

(L.S.)

**MARIE-LOUISE
COLEIRO PRECA
President**

5th July, 2016

ACT No. XXXV of 2016

AN ACT to amend the Electronic Commerce Act and to make provision with respect to matters ancillary thereto or connected therewith.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title,
purpose and
commencement.
Cap. 426.

1. (1) The short title of this Act is the Electronic Commerce (Amendment) Act, 2016, and this Act shall be read and construed as one with the Electronic Commerce Act, hereinafter referred to as "the principal Act".

(2) The purpose of this Act is to amend the Electronic Commerce Act and to provide for such measures under national law as are necessary to ensure the effective implementation of Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.

(3) Unless stated otherwise in this Act, the provisions of this Act shall come into force as from the 1st July 2016.

Amendment of
article 2 of the
principal Act.

2. Article 2 of the principal Act shall be amended as follows:

(a) for the words "In this Act, unless the context otherwise requires" there shall be substituted the words "In this Act, the definitions contained in Article 3 of the Regulation shall apply and, unless the context otherwise requires";

(b) the definition "advanced electronic signature" shall be deleted;

(c) the definition "certificate" shall be substituted by the following:

" "certificate" means any one of the following:

(a) a certificate for electronic signature;

(b) a certificate for electronic seal; or

(c) a certificate for website authentication;"

(d) immediately after the definition "certificate" there shall be added the following new definition:

" "certificate service provider" means the trust service provider that issues certificates;

(e) immediately after the new definition "certificate service provider" there shall be added the following new definition:

" "commercial communication" means any form of communication designed to promote directly or indirectly, the goods, services or image of a company, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession. The following do not in themselves constitute commercial communications:

(a) information allowing direct access to the activity of the company, organisation or person, in particular the domain name of an electronic mail address;

(b) communications relating to the goods, services or image of the company, organisation or person compiled in an independent manner, particularly when this is without financial consideration;"

(f) for the definition "competent authority" there shall be substituted the following:

" "competent regulator" means any such public body as may be designated by the Minister according to the Sixth Schedule to act as the regulatory body tasked with ensuring compliance with this Act and, or with the Regulation:

Provided that the Minister may amend such Schedule by Order in the Gazette, and in doing so may

A 1136

provide for the exercise of the regulatory powers of the regulatory body designated to act as the competent regulator for the purposes of this Act:

Provided further that in doing so the Minister may designate different public bodies to administer and enforce different provisions of this Act and, or of the Regulation. In doing so the Minister shall clearly establish the remit of each such public body ensuring also that there is effective co-ordination between such bodies;"

(g) immediately after the definition "consumer" there shall be added the following new definition:

" "coordinated field" means requirements applicable to information society service providers or information society services, regardless of whether they are of a general nature or specifically designed for them, and covers requirements with which the service provider has to comply in respect of:

(a) the taking up of the activity of an information society service, such as requirements concerning qualifications, authorisation or notification;

(b) the pursuit of the activity of an information society service, such as requirements concerning the behaviour of the service provider, requirements regarding the quality or content of the service, including those applicable to advertising and contracts, or requirements concerning the liability of the service provider,

but does not cover requirements such as those applicable to goods as such, to the delivery of goods or to services not provided by electronic means;"

(h) immediately after the new definition "coordinated field" there shall be added the following new definition:

" "cross-border infringement" means:

(a) an act or omission contrary to this Act and, or to the Regulation which takes place in Malta and which harms or is likely to harm the collective interests of consumers residing in a Member State or in Member States other than Malta; or

(b) an act or omission contrary to this Act and, or to the Regulation by a seller or supplier who is established in

Malta and which harms or is likely to harm the collective interests of consumers residing in a Member State or in Member States other than Malta; or

(c) an act or omission contrary to this Act and, or to the Regulation which takes place in Malta and which harms or is likely to harm the collective interests of consumers residing in a Member State or in Member States other than Malta where the evidence or assets pertaining to the act or omission are to be found in Malta;"

(i) the definition "electronic signature" shall be deleted;

(j) immediately after the definition "electronic contract" there shall be added the following new definition:

" "Electronic Commerce Directive" means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market;"

(k) immediately after the new definition "Electronic Commerce Directive" there shall be added the following new definition:

" "enforcement action" means any form of enforcement action, however so described, including the imposition of any sanctions that an enforcement authority, including the competent regulator, is empowered to take at law;"

(l) immediately after the new definition "enforcement action" there shall be added the following new definition:

" "enforcement authority" means any public entity which at law is authorised to take enforcement action, but does not include a court however so described;"

(m) immediately after the new definition "enforcement authority" there shall be added the following new definition:

" "European Commission" or "Commission" means the European Commission of the European Union;"

(n) immediately after the definition "information technology requirements" there shall be added the following new definition:

" "Member State" means a Member State of the

A 1138

European Union;"

(o) the definition "qualified certificate" shall be deleted;

(p) immediately after the definition "prescribed" there shall be added the following new definition:

" "qualified entity" means:

Cap. 378. (a) a registered consumer association within the meaning of Part IV of the Consumer Affairs Act, and a voluntary organization recognized by the competent regulator as having a legitimate interest in protecting the collective interests of consumers:

Cap. 378. Provided that before recognizing any such voluntary organization as a qualified entity the competent regulator shall consult with the Consumer Affairs Council as established under the Consumer Affairs Act;

(b) in the context of articles 8A, 8B and 8C any enforcement authority to whom this Act applies;

(c) one or more independent public bodies, having a legitimate interest in ensuring the protection of the collective interests of consumers of any services regulated by the Electronic Commerce Directive or by the Regulation in other Member States in which such bodies exist;

(d) voluntary organizations in other Member States whose purpose is to protect the collective interests of consumers in accordance with the criteria laid down by their national law;

(e) one or more organizations recognized by the competent regulator as collectively representing information society service providers; or

(f) any qualified entity from a Member State included in the list of qualified entities as may from time to time be published by the European Commission;"

(q) immediately after the definition "recipient of the service" there shall be added the following new definition:

" "regulated profession" means any profession within the meaning of either:

(a) Article 1(d) of the European Council Directive 89/48/EEC of the 21 December 1988 on a general system for the recognition of higher education diplomas awarded on completion of professional education and training for a duration of at least three years; or

(b) Article 1(f) of the European Council Directive 92/51/EEC of the 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/84/EEC;"

(r) immediately after the new definition "regulated profession" there shall be added the following new definition:

" "Regulation" means Regulation number 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic communications in the internal market and repealing Directive 1999/93/EC;"

(s) immediately after the new definition "Regulation" there shall be added the following new definition:

" "service provider" means any person established in Malta providing an information society service;"

(t) the definitions "signature certification service provider", "secure signature creation device", "signature verification data", and "signature verification device" shall be deleted;

(u) immediately after the definition "transaction" there shall be added the following new definition:

Cap. 490. " "Tribunal" means the Administrative Review Tribunal established by article 5 of the Administrative Justice Act;"

(v) immediately after the new definition "Tribunal" there shall be added the following new definition:

" "Union" means the European Union."; and

(w) the definition "voluntary accreditation" shall be

A 1140

deleted.

General amendment in the principal Act.

3. For the words "competent authority", wherever they occur in the principal Act, there shall be substituted the words "competent regulator".

Amendment of article 4 of the principal Act.

4. Sub-article (1) of article 4 of the principal Act shall be substituted by the following:

"(1) Unless otherwise prescribed, the provisions of this Act and of the Regulation shall not apply to those activities or areas as are listed in the Fifth Schedule. The Minister may, after consultation with the competent regulator, by notice in the Gazette, amend the Fifth Schedule."

Deletion of article 6 of the principal Act.

5. Article 6 of the principal Act shall be deleted.

Addition of new articles to the principal Act.

6. Immediately after article 8 of the principal Act there shall be added the following new articles:

"Internal market.

8A. (1) Subject to the provisions of sub-article (4), any requirement that falls within the coordinated field shall apply to the provision of an information society service by a service provider established in Malta, irrespective of whether that service is provided in Malta or in another Member State.

(2) Subject to the provisions of sub-article (4) an enforcement authority with responsibility in relation to any requirement in sub-article (1) shall ensure that the provision of an information service by a service provider established in Malta complies with that requirement irrespective of whether the service is provided in Malta or in another Member State, and any power, remedy or procedure for taking enforcement action shall be available to secure compliance.

(3) Subject to the provisions of sub-articles (4) and (5), no requirement shall be applied to the provision of an information society service by a service provider established in a Member State other than Malta for reasons which fall within the coordinated field if the application of the requirement would restrict the freedom to provide information society services to a person in Malta from that Member State.

(4) Subarticles (1), (2) and (3) shall not apply to the fields set out in the Seventh Schedule to this Act.

(5) The reference to any requirements the application of which would restrict the freedom to provide information society services from another Member State in sub-article (3) does not include any requirement maintaining the level of protection for public health and consumer interests established by European Union law.

Derogations
from article 8A.

8B. (1) Notwithstanding the provisions of article 8A(3), an enforcement authority may take measures, including applying any requirement which would otherwise not apply by virtue of article 8A(3), in respect of a given information society service, where those measures are necessary for reasons of -

(a) public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons;

(b) the protection of public health;

(c) public security, including the safeguarding of national security and defence; or

(d) the protection of consumers, including investors,

and are proportionate to those objectives.

(2) Notwithstanding the provisions of article 8A(3), in any case where an enforcement authority is not party to the proceedings, a court may, on the application of any person or of its own motion, apply any requirement which would otherwise not apply by virtue of article 8A(3) in respect of a given information society service, if the application of that law or requirement is necessary for and proportionate to any of the objectives set out in sub-article (1).

A 1142

(3) Subarticles (1) and (2) shall only apply where the information society service prejudices or presents a serious and grave risk of prejudice to an objective as stated in sub-article (1)(a) to (d).

(4) Subject to the provisions of sub-articles (5) and (6), an enforcement authority shall not take the measures in sub-article (1) unless it:

(a) asks the Member State in which the service provider is established to take measures and the aforesaid Member State does not take such measures or the measures taken are considered by the enforcement authority concerned as inadequate; and

(b) notifies the European Commission and the Member State in which the service provider is established of its intention to take such measures.

(5) Nothing in sub-article (4) affects the commencement of any legal proceedings or the investigation of any offence or breach, however so described, by any enforcement authority.

(6) If it appears to the enforcement authority that the matter is one of urgency, it may take the measures under sub-article (1) without first applying the requirements of sub-article (4).

(7) In a case where a measure is taken pursuant to sub-article (6), the enforcement authority shall notify the measures taken, to the European Commission and to the Member State concerned in the shortest time possible thereafter stating in writing the reasons for urgency.

General
information to be
provided.

8C. (1) Without prejudice to other information requirements as may be established at law, a service provider shall make available to the recipient of the service and where appropriate or requested, to the enforcement authority responsible at law in ensuring compliance, including where applicable to the competent regulator, in a form and manner which is easily, directly and permanently accessible, the following information:

(a) the name of the service provider;

(b) the geographic address where the service provider is established;

(c) the details of the service provider, including his electronic mail address, which allow him to be contacted rapidly and communicated with in a direct and effective manner;

(d) where the service provider is registered in a trade or similar public register, the trade or other such register in which the service provider is entered and his registration number, or equivalent means of identification in that register;

(e) where the activity is subject to an authorisation scheme, the particulars of the relevant supervisory authority;

(f) where the service provider is a member of a regulated profession -

(i) any professional body or similar institution with which the service provider is registered;

(ii) the professional title of the provider and the Member State where it has been granted; and

(iii) a reference to the applicable professional rules in the Member State of establishment and the means to access them;

(g) where the service provider undertakes an activity that is subject to value added tax, the identification number referred to in Article 22(1) of the Sixth Council Directive 77/388/EEC of 17th May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment; and

A 1144

(h) when a service provider sends unsolicited commercial communications, details of how users of the service can register their choice regarding unsolicited commercial communications, which details must be prominently displayed on the website of the service provider and at every point where users of the service are asked to provide information when accessing the website of the service provider.

(2) Where the service provider refers to prices, such prices shall be indicated clearly and unambiguously and, in particular, shall indicate whether they are inclusive of any tax, however so described, and delivery costs.

Provision of
information in
commercial
communications.

8D. In addition to any other information requirements that may be established at law, a service provider shall ensure that any commercial communication provided by him, which constitutes or forms part of an information society service shall -

(a) be clearly identified as a commercial communication;

(b) clearly identify the person on whose behalf the commercial communication is made;

(c) clearly identify as such any promotional offer, including any discount, premium or gift, and ensure that any conditions which must be met to qualify for it are easily accessible, and presented clearly and unambiguously;

(d) clearly identify as such any promotional competition or game and ensure that any conditions for participation are easily accessible and presented clearly and unambiguously; and

Cap. 440. (e) without prejudice to the provisions of the Data Protection Act and of any other laws regulating data protection, clearly identify details of how users of the service can register their choice regarding unsolicited commercial communications, which details must be prominently displayed at every point where users of the service are asked to provide information.

Regulated professions.

8E. (1) This article establishes and regulates the right under the Act to make a commercial communication which is part of, or constitutes, a service provided by a member of a regulated profession.

(2) Without prejudice to any other provision of the Act permitting a restriction or limitation of the right to which this article applies, a body which at law is responsible for a regulated profession may, in exercise of any powers vested in it at law to regulate the activities of its members, make the exercise by a member of the profession of the right to which this article applies, subject to compliance with specified conditions as referred to in sub-article (3).

(3) The conditions that may be so specified are those that may reasonably be regarded as appropriate for the purpose of maintaining the standing and integrity of the profession concerned and ensuring adherence by its members to the requisite standards and, in particular, for the purpose of ensuring -

(a) the independence, dignity and honour of the profession, and

(b) compliance with obligations of professional secrecy and fairness towards clients and other members of the profession.

No requirement for prior authorisations.

8F. Subject to the provisions of article 8G, the provision of information society services by a service provider shall not be subject to any prior authorisation:

A 1146

Cap. 399. Provided that the provision of such information society services shall be without prejudice to authorisation schemes which are not specifically and exclusively targeted at information society services, or which are covered by the Electronic Communications (Regulation) Act or any regulations made thereunder.

Notification requirement.

8G. (1) For the purposes of this article only, "services" means any such information society services to which the provisions of this article may apply consequential to any designation that the competent regulator may make in accordance with sub-article (2).

(2) Before providing services, a service provider shall complete and file a notice with the competent regulator which shall be made in such form and include any such information as the competent regulator may require:

Provided that such information shall be limited to what is necessary for the competent regulator to identify the service provider and the services he provides:

Provided further that the competent regulator may, with the prior written approval of the Minister, designate such other categories of service providers to complete and file a notice in accordance with this article as the competent regulator may from time to time consider necessary.

(3) The service provider shall notify the competent regulator if such a service provider ceases to provide the notified service or if there is any change in the details of the notice previously filed. Such notification shall be made within thirty days of cessation of service provision or of the change to the notified information.

(4) The competent regulator shall establish and maintain a register of those service providers that have notified the competent regulator in accordance with this article. Such register shall be accessible to the public and shall contain such information as the competent regulator considers appropriate.

Non-applicability of certain articles to the activities or areas listed in the Fifth Schedule of the Act.

8H. Articles 8A to 8F shall not apply to the activities or areas listed in paragraphs (a), (b), (c) and (d) of the Fifth Schedule to the Act."

7. Sub-article (1) of article 13 of the principal Act shall be substituted by the following:

Amendment of article 13 of the principal Act.

"(1) If the addressee of an electronic communication has designated an information system for the purpose of receiving electronic communications, then, save as otherwise agreed between the originator and the addressee of the electronic communication or as otherwise required under the Regulation, the time of receipt of the electronic communication is the time when the electronic communication enters the information system."

8. Immediately after article 15 of the principal Act there shall be added the following new article:

Addition of new article to the principal Act.

"Communica-tions by registered mail.

15A. Wherever any legal requirement exists to communicate by way of registered mail, this requirement shall be deemed to be satisfied by the use of a qualified electronic registered delivery service by all parties participating in the communication:

Provided that this article shall come into force on such date as the Minister may expressly determine by order in the Gazette."

9. Part V and articles 16 to 18 of the principal Act shall be deleted.

Deletion of Part V and articles 16 to 18 of the principal Act.

10. Article 23 of the principal Act shall be amended as follows:

Amendment of article 23 of the principal Act.

(a) for the words "signature creation device" or "signature device", wherever they occur, there shall be substituted the words "electronic signature creation device or an electronic seal creation device";

(b) for the words "signature certification service provider", wherever they occur, there shall be substituted the words "certificate service provider"; and

(c) for the words "electronic signature", wherever they occur, there shall be substituted the words "electronic signature

A 1148

or electronic seal".

Addition of new articles to the principal Act.

11. Immediately after article 23 of the principal Act there shall be added the following new articles:

"Supervisory body for the purposes of the Regulation.

23A. (1) The competent regulator shall be responsible for the supervisory tasks stated in the Regulation and in doing so shall in particular:

(a) supervise qualified trust service providers established in Malta ensuring through *ex ante* and *ex post* supervisory activities, that such qualified trust service providers and the qualified trust services that they provide, meet the requirements laid down in the Regulation;

(b) take action if necessary, in relation to non-qualified trust service providers established in Malta through *ex post* supervisory activities, when informed that those non-qualified trust service providers or the trust services they provide allegedly do not meet the requirements laid down in the Regulation.

(2) Without prejudice to the generality of the tasks onerous on the competent regulator as stated in sub-article (1), the competent regulator shall be responsible for the following:

(a) cooperating with other supervisory bodies and provide them with assistance in accordance with Article 18 of the Regulation;

(b) analysing the conformity assessment reports referred to in Articles 20(1) and 21(1) of the Regulation;

(c) informing other supervisory bodies and the public about breaches of security or loss of integrity in accordance with Article 19(2) of the Regulation;

(d) reporting to the European Commission about its main activities in accordance with paragraph 6 of Article 17 of the Regulation;

(e) carrying out audits or requesting a conformity assessment body to perform a conformity assessment of the qualified trust service providers in accordance with Article 20(2) of the Regulation;

(f) cooperating with the Office of the Information and Data Protection Commissioner in Malta, in particular, by informing that Office without undue delay, about the results of audits of qualified trust service providers, where personal data protection rules may in the opinion of the competent regulator have been breached;

(g) granting qualified status to trust service providers and to the services they provide and to withdraw this status in accordance with Articles 20 and 21 of the Regulation;

(h) informing the body responsible for the national trusted list referred to in Article 22(3) of the Regulation about its decisions to grant or to withdraw qualified status:

Provided that such a requirement shall not apply if the competent regulator also performs the tasks of the body referred to in this paragraph;

(i) verifying the existence and correct application of provisions on termination plans in cases where the qualified trust service provider ceases its activities including how information is kept accessible in accordance with point (h) of Article 24(2) of the Regulation;

(j) requiring that trust service providers remedy any failure to fulfil the requirements laid down in the Regulation;

(k) establishing, maintaining and publishing trusted lists in accordance with Articles 22(1) and 22(2) of the Regulation, and notifying the Commission in relation thereto in accordance with Article 22(3) of the Regulation; and

A 1150

(l) notifying the Commission in relation to any lists in accordance with Articles 31(1) and 39(3) of the Regulation.

Non-compliance with the Regulation.

23B. Unless stated otherwise in this Act, where applicable, any non-compliance with the provisions of this Act or of the Regulation, shall constitute a breach of this Act, and shall be treated accordingly by the competent regulator who shall as it considers appropriate take the necessary regulatory measures in accordance with its powers at law.

Non-compliance with the Act and powers of the competent regulator.

23C. Unless stated otherwise in the Act, a breach of any of the provisions of the Act shall be subject to any such sanctions as the competent regulator is empowered by law to impose."

Substitution of article 24 of the principal Act.

12. Article 24 of the principal Act shall be substituted by the following:

"24. Any person contravening articles 20, 22 and 23 of the Act, or Articles 19(2), 20(1), 21(1), 21(3), 23 and 24 of the Regulation, shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) of not more than two hundred and fifty thousand euro (€250,000) or to imprisonment not exceeding two years or to both such fine (*multa*) and imprisonment, and in the case of a continuous offence to a fine not exceeding two thousand, five hundred euro (€2,500) for each day during which the offence continues:

Provided that where any proceedings are undertaken by the Commissioner of Police under this sub-article, the Commissioner of Police shall in writing notify the competent regulator of the taking of such proceedings and of the final outcome of the same."

Addition of new articles to the principal Act.

13. Immediately after article 24 of the principal Act there shall be added the following new articles:

"Disputes between a service provider and a consumer.

24A. (1) Where a dispute however so described arises between a service provider and a consumer further to a complaint by a consumer alleging an infringement of the Act or of the Regulation as are enforced by the competent regulator, any party to such a dispute may refer the dispute to the competent regulator:

Provided that in making a complaint the consumer must *prima facie* show that he has been affected by the act or omission of the service provider giving rise to the complaint.

(2) Upon receipt of any reference as aforesaid, or upon otherwise becoming aware of any such dispute that the competent regulator believes should be investigated, the competent regulator shall notify all the parties to the dispute that the matter is being investigated. In doing so, the competent regulator shall regulate its own procedure, which procedure shall, as far as is reasonably possible, be transparent, simple, inexpensive and conducive to a prompt and fair settlement of the dispute, and shall afford all parties to the dispute reasonable opportunity to make their submissions and to produce any relevant information:

Provided that the competent regulator may decide not to initiate an investigation in accordance with this article where it is satisfied that other means of resolving the dispute in a timely manner are available to the parties, or if legal proceedings in relation to the dispute have been initiated by any party to the dispute, or if another public authority is already investigating the same dispute.

(3) The competent regulator in resolving any disputes referred to it under this article, may issue directives to the service provider requiring that service provider to comply with any measure the competent regulator may specify for the resolution of the dispute. Such directives may, having regard to its determination of the dispute and to all other relevant matters, include an order to effect the reimbursement of payments received or to make compensation payments. Such payments may also include the whole or part of the costs of any party relating to the engagement of a lawyer and, or of a technical adviser in relation to any submissions relating to the dispute.

A 1152

(4) The competent regulator shall make publicly available any administrative procedures it may from time to time establish in relation to the handling of any disputes referred to it under this article.

(5) The provisions of this article shall be without prejudice to the right of the consumer to have recourse, in accordance with Maltese law, to any other body empowered to resolve any such disputes and, or to any out-of-court dispute resolution processes, however so described.

(6) In issuing a decision under this article the competent regulator shall state the reasons on which it is based, and shall, subject to such requirements of commercial confidentiality as it may deem appropriate, notify the parties to the dispute with a copy of the decision.

(7) The competent regulator shall publish notice of a decision given under this article and shall state from where copies of, or information regarding the decision, may be obtained.

Issue of a
compliance
order.

24B. (1) Where the competent regulator feels it is reasonably appropriate or necessary for the protection of consumers, it may, of its own initiative or on a written application to it by a qualified entity, issue a compliance order against a service provider or any other person for one or more of the following purposes:

(a) requiring any person to take any measures specified in the compliance order, within the time specified in the order to ensure that the provisions of the Act and, or of the Regulation are complied with; or

(b) requiring any person to cease and desist from committing a breach of the Act and, or of the Regulation.

(2) The competent regulator shall when issuing a compliance order under this article:

(a) notify a copy of the compliance order on each person against whom the order is made;

(b) include with the compliance order, information about the right to contest the order before the Tribunal; and

(c) briefly state the reasons for issuing the compliance order, which reasons shall be notified to each person against whom the order is issued and, if any, to the qualifying body on whose application the order is issued.

(3) No precautionary warrant or other similar order under this or any other law shall be issued by the Tribunal or by any court restraining or restricting the competent regulator from issuing a compliance order under this Act.

(4) A compliance order issued by the competent regulator shall come into force with immediate effect, unless the order provides otherwise.

Application for
the issue of a
compliance
order.

24C. (1) Where a qualified entity wishes to seek a compliance order, it shall submit a written application to the competent regulator whereby it must satisfy the competent regulator that it tried to achieve the cessation of the infringement in consultation with either the party against whom the order is being sought or with both such a party and another qualified entity of the Member State in which the order or a similar injunction is being sought:

Provided that the competent regulator shall only consider a written application if the qualified entity shows to the satisfaction of the competent regulator that the cessation of the infringement was not achieved within twenty days after the request for consultation was received.

(2) Where the qualified entity is from another Member State, the competent regulator shall treat the list of qualified entities published by the Commission as conclusive proof of the legal capacity of the legal entity to present such written application in Malta.

A 1154

(3) The competent regulator shall, at the request of a qualified entity from Malta, communicate to the Commission the name and objects of such an entity and that such qualified entity should be added to the list of qualified entities so as to facilitate the redress of infringements which occur in other Member States.

(4) Before proceeding with the issue of a compliance order under article 24B, the competent regulator shall, if it considers it to be possible and reasonable to do so, seek first to achieve voluntary compliance by the service provider and other persons involved, in accordance with the Act and, or the Regulation or any other law dealing with consumer protection.

Discretion of the competent regulator to issue a compliance order.

24D. (1) It shall be at the discretion of the competent regulator whether or not to issue a compliance order after a written request by a qualified entity has been made to it in terms of article 24B.

(2) If the competent regulator decides not to issue a compliance order after an application has been made to it by a qualified entity, the competent regulator shall, within two days from the date of its decision not to issue an order as sought, notify in writing the qualified entity and the persons against whom the compliance order is sought, with its decision stating the reasons thereof.

(3) A qualified entity may within twenty days from when it notifies the competent regulator in writing with a request for the issue of a compliance order, apply to the Tribunal requesting the Tribunal to order the competent regulator to issue a compliance order under article 24B. The person against whom the order is requested and the competent regulator shall be parties to the proceedings before the Tribunal, and it shall be the duty of the qualified entity to notify such other parties accordingly.

Appeals from a compliance order.

24E. (1) A person against whom a compliance order has been made, may, within twenty days from receipt of notification of the compliance order, appeal in writing to the Tribunal for the revocation or amendment of the compliance order, giving detailed grounds for the request. The competent regulator and where appropriate any qualifying entity that may have requested the issue of the compliance order, shall be notified with the appeal and shall have twenty days from the date when they are notified with the appeal in which to reply.

(2) The Tribunal may confirm, change or cancel the compliance order as it considers appropriate, provided that in doing so the Tribunal shall in all instances state its reasons.

(3) Where an appeal is instituted under this article the compliance order shall remain in force unless the Tribunal, at the request of the party contesting the order, specifically orders that the compliance order shall be suspended pending the outcome of the appeal, subject to such conditions and amendments to the order as the Tribunal may determine:

Provided that in deciding any such request for a suspension of the compliance order, the Tribunal shall give its reason in writing for its decision.

Cases to be heard and determined with urgency.

24F. (1) Appeals instituted under articles 24D and 24E shall be heard and determined by the Tribunal with urgency and as expeditiously as possible.

(2) The Tribunal, at the request of any of the parties to the proceedings before it, may abridge any time limits established under this Act in relation to the conduct of the appeal before it:

Provided that in doing so the Tribunal shall state its reasons in writing.

No need to prove actual loss.

24G. The competent regulator when issuing a compliance order under the Act shall not be required to prove:

- (a) actual loss or damage; or

A 1156

(b) actual recklessness, negligence or fault on the part of the service provider or person against whom the order is made.

Taking of other measures to ensure compliance.

24H. (1) Without prejudice to any other powers it has at law, the competent regulator may, in writing, order any person to cease and desist from committing any cross-border infringement and, or from acting in breach of any of the provisions of the Act, and, or of the Regulation.

(2) The competent regulator may, in issuing an order under sub-article (1) require the person concerned to provide it with a written undertaking whereby that person agrees to cease and desist from any such breach and which undertaking shall include any conditions as the competent regulator may consider necessary in the circumstances.

(3) A person who makes an undertaking in accordance with this article and who subsequently acts in breach of any conditions stated in the undertaking, shall be liable to the imposition of an administrative fine by the competent regulator not exceeding the sum of twenty-five thousand euro (€25,000) and, or five hundred euro (€500) for each day during which the failure to comply with the undertaking persists:

Provided that the imposition of a fine under this sub-article shall be without prejudice to any other sanctions however so described that the competent regulator may impose at law.

Competent regulator may require publication.

24I. (1) The competent regulator may, for the better information of the public, require the service provider or person against whom the compliance order has been issued, at the expense of the latter to communicate in any manner the competent regulator considers appropriate, including publication in at least two daily newspapers:

(a) a copy in full or in part -

(i) of a compliance order made under article 24B; and, or

(ii) a copy of an undertaking given under article 24H or an abstract of any such order and, or of any such undertaking; and, or

(b) a corrective statement in relation to any contravention of the Act and, or of the Regulation.

(2) Any communications required in terms of sub-article (1) must be made within seven days from receipt of a notice issued by the competent regulator requiring the service provider or person concerned to make any such communications. Where the said communications are not effected as aforesaid, the competent regulator may proceed to issue the communications itself and any expenses incurred by the competent regulator in issuing any communications made by it in accordance with the provisions of this article shall be recoverable as a civil debt from the person against whom the compliance order was issued.

Right of appeal.

24J. Any person aggrieved by a decision however so described taken by the competent regulator in accordance with the Act and having a legal interest to contest such a decision, may appeal to the Tribunal:

Provided that in the case of a contestation of any matter relating to the issue of a compliance order as provided for in this Act, the procedures as stated in articles 24D and 24E shall apply.

Consultation with and by other enforcement authorities.

24K. (1) The competent regulator may request the advice of and where appropriate shall consult with any other enforcement authority in the exercise of any of its functions under the Act and, or the Regulation.

(2) In acting in accordance with any of the provisions of this Act, an enforcement authority shall, in all instances, first consult and act in co-ordination with the competent regulator."

14. Article 25 of the principal Act shall be amended as follows:

Amendment of article 25 of the principal Act.

A 1158

(a) sub-article (1) thereof shall be amended as follows:

(i) for the words "for any matter related to electronic commerce" there shall be substituted the words "for any matter related to electronic commerce however so described, electronic identification, trust services, electronic transactions, and any such other matters as may be complementary or related thereto,";

(ii) in sub-paragraph (v) of paragraph (b) thereof, for the word "signatures" there shall be substituted the words "trust services";

(iii) paragraphs (c) and (d) thereof shall be deleted;

(iv) in sub-paragraph (i) of the proviso to paragraph (f) thereof, for the words "the amount of twenty-three thousand and two hundred and ninety euro (23,290) for each offence and two thousand and three hundred and twenty-five euro (2,325)" there shall be substituted the words "the amount of twenty-five thousand euro (€25,000) for each offence and two thousand and five hundred euro (€2,500)";

(v) in sub-paragraph (ii) of the proviso to paragraph (f) thereof, for the words "a maximum of one hundred and sixteen thousand and four hundred and sixty-five euro (116,465) and eleven thousand and six hundred and forty-five euro (11,645)" there shall be substituted the words "a maximum of one hundred and twenty-five thousand euro (€125,000) and twelve thousand and five hundred euro (€12,500)";

(vi) in paragraph (h) thereof, for the words "regulated by or under this Act." there shall be substituted the words "regulated by or under this Act;"; and

(vii) immediately after paragraph (h) thereof there shall be added the following new paragraphs:

"(i) the definition of requirements and procedures for the designation of appropriate public or private bodies authorised to assess the conformity of qualified electronic signature creation devices and qualified electronic seal creation devices with the requirements of the Regulation, as well as the designation itself of such bodies; and

(j) any fees and, or charges, however so described, that may be payable in relation to any matters regulated by or under this Act or by or under the Regulation."; and

(b) sub-article (3) thereof shall be deleted.

15. On the coming into force of articles 2, 3, 6, 13 and 17 of this Act, the Electronic Commerce (General) Regulations shall be revoked.

Revocation of the Electronic Commerce (General) Regulations. S.L. 426.02.

16. Immediately after paragraph (i) of the First Schedule to the principal Act there shall be added the following new paragraph:

Amendment of the First Schedule to the principal Act.

"(j) in relation to a regulated profession:

- any professional body or similar institution with which the service provider is registered,
- the professional title and the Member State where it has been granted, and
- a reference to the applicable professional rules in the Member State of establishment and the means to access them."

17. The Second, Third and Fourth Schedules of the principal Act shall be deleted.

Deletion of the Second, Third and Fourth Schedules to the principal Act.

18. Immediately after the Fifth Schedule to the principal Act there shall be added the following new Schedules:

Addition of a new Schedule to the principal Act.

"Sixth Schedule

(Article 2)

Designation of competent regulator in accordance with article 2

In accordance with the provisions of article 2 within the context of the definition "competent regulator", the following public authority is being designated as the competent regulator for all the purposes of the Act and of the Regulation:

The Malta Communications Authority:

Provided that unless stated otherwise in the Malta Communications Authority Act (Cap. 418), the provisions of Part VI entitled "Enforcement and Sanctions" of that Act shall apply in relation to the exercise by the Malta Communications

A 1160

Authority of any of its regulatory functions as the competent regulator, in particular where the Malta Communications Authority as the competent regulator considers that a breach of the Act or of the Regulation may be liable to the imposition of a sanction as provided for in article 31 of the Malta Communications Authority Act (Cap. 418).

Seventh Schedule

(Article 8A)

Fields excluded in accordance with article 8A(4)

1. To the extent that the following national laws implement the Directives referred to in the Annex to the Electronic Commerce Directive namely:

(a) the Copyright Act (Cap. 415), and the Patents and Designs Act (Cap. 417) insofar as these laws relate to copyright, neighbouring rights, rights referred to in Directive 87/54/EEC and Directive 96/9/EC as well as industrial property rights;

(b) article 5 of the Banking Act (Cap. 371) insofar as it relates to the emission of electronic money by institutions in respect of which Member States applied one of the derogations provided for in article 8(1) of Directive 2000/46/EC;

(c) the Undertakings for Collective Investment in Transferable Securities and Management Companies Regulations (S.L. 370.11);

(d) the European Passport Rights for Insurance and Reinsurance Undertakings Regulations (S.L. 403.14).

2. The freedom of the parties to a contract to choose the applicable law.

3. Contractual obligations concerning consumer contracts.

4. Formal validity of contracts creating or transferring rights in real estate where such contracts are subject to mandatory formal requirements of the law of the Member State where the real estate is situated.

5. The permissibility of unsolicited commercial

communications by electronic mail."

19. The Maltese texts of the enactments in the First Column of the Schedule to this Act shall have effect subject to the amendments appearing relative thereto in the Second Schedule of the said Schedule.

Consequential amendment of other enactments.

SCHEDULE

Amendment of Laws

First Column Enactment	Second Column Extent of Amendments
Utilities and Services (Regulation of Certain Works) Act. Cap. 81	<p>1. In the Maltese text of article 2 thereof the definition " "regolatur kompetenti ta' infrastruttura" jew "regolaturi kompetenti ta' infrastruttura" " shall be substituted by the following:</p> <p>" "regolatur kompetenti ta' infrastruttura" jew "regolaturi kompetenti ta' infrastruttura" tfisser dak il-korp jew korpi tas-settur pubbliku responsabbli għar-regolament ta' dik l-infrastruttura li jistgħu jkunu elenkati fl-Ewwel Skeda, liema Skeda tista' minn żmien għal żmien tiġi emendata mill-Ministru responsabbli għall-infrastruttura permezz ta' avviz fil-Gazzetta;"</p>
Article 4A	<p>2. Article 4A thereof shall be amended as follows:</p> <p>(a) in the Maltese text of sub-article (2) thereof, for the words "li ssirlu talba bil-miktub minn regolatur kompetenti tal-infrastruttura", and the words "jikkonsulta bil-miktub lir-regolatur jew regolaturi kompetenti hekk kif jista' jkun il-każ:" there shall respectively be substituted the words "li ssirlu talba bil-miktub minn regolatur kompetenti ta' utilitajiet" and the words "jikkonsulta bil-miktub lir-regolatur jew regolaturi kompetenti ta' utilitajiet hekk kif jista' jkun il-każ:"; and</p>

A 1162

(b) in the Maltese text of sub-article (4) thereof, for the words "b'koordinament mar-regolatur jew regolaturi kompetenti ta' infrastruttura" there shall be substituted the words "b'koordinament mar-regolatur jew regolaturi kompetenti ta' utilitajiet".

Article 4C 3. In the Maltese text of article 4C thereof, for the words "wara konsultazzjoni bil-miktub mar-regolatur jew regolaturi kompetenti ta' infrastruttura," there shall be substituted the words "wara konsultazzjoni bil-miktub mar-regolatur jew regolaturi kompetenti ta' utilitajiet,".

Article 4E 4. In the Maltese text of article 4E thereof, for the words "Persuna jew regolatur kompetenti ta' infrastruttura", and the words "Izda wkoll, meta jkun hekk japplika, ir-regolatur kompetenti tal-infrastruttura" there shall respectively be substituted the words "Persuna jew regolatur kompetenti ta' utilitajiet", and the words "Izda wkoll, meta jkun hekk japplika, ir-regolatur kompetenti ta' utilitajiet".

Article 6 5. In the Maltese text of article 6(3)(b) thereof, for the words "ma' kull min ir-regolatur kompetenti tal-utilitajiet" there shall be substituted the words "ma' kull min ir-regolatur kompetenti tal-infrastruttura".

Article 14 6. In the Maltese text of sub-article (4) of article 14 thereof, for the words "ghaldaqstant kull parti tista' tirreġistra tilwima mal-Bord ghas-Soluzzjoni ta' Tilwim u dik it-tilwima ghandha tiġi pprezentata bil-miktub lill-Bord minn meta jiskadi l-perjodu ta' xahrejn imsemmi f'dan is-subartikolu." there shall be substituted the words "ghaldaqstant kull parti tista' tirreġistra tilwima mal-Bord ghas-Soluzzjoni ta' Tilwim meta jiskadi l-perjodu ta' xahrejn imsemmi f'dan is-subartikolu.".

Article 36 7. In the Maltese text of article 36(2) thereof, for the words "impatt hazin fuq il-provediment ta' servizzi ta' komunikazzjonijiet elettronici f'Malta." there shall be substituted the words "impatt hazin fuq il-provdiment ta' servizzi u, jew *networks* ta' komunikazzjonijiet elettronici f'Malta.".

Passed by the House of Representatives at Sitting No. 412 of the
4th July, 2016.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

