

## A.L. 16 ta' l-2003

**ATT DWAR IL-PROTEZZJONI U L-PRIVATEZZA  
TAD-DATA  
(KAP. 440)**

**Regolamenti ta' l-2003 dwar l-Ipproċessar ta' *Data* Personali  
fis-Settur tat-Telekomunikazzjonijiet**

BIS-SAHHA tas-setghat moghtija bl-artikolu 54 ta' l-Att dwar il-Protezzjoni u l-Privatezza tad-*Data*, il-Ministru tal-Ġustizzja u Gvern Lokali, wara konsultazzjoni mal-Kummissarju għall-Protezzjoni tad-*Data*, għamel dawn ir-regolamenti li ġejjin:-

**1.** It-titolu ta' dawn ir-regolamenti hu **Regolamenti ta' l-2003** Titolu.  
dwar l-Ipproċessar ta' *Data* Personali fis-Settur tat-  
Telekomunikazzjonijiet.

**2.** Dawn ir-regolamenti għandhom jibdwew isehhu hekk kif il- Bidu fis-sehh.  
Ministru jista' b'ordni fil-Gazzetta jstabilixxi u dati differenti jistgħu  
jiġu stabbiliti għar-rigward ta' regolamenti differenti.

**3.** (1) Kemm-il darba ma jissemmiex xort'ohra f'dawn ir- Tifsiriet.  
regolamenti, għandhom japplikaw it-tifsiriet moghtija fl-Att biex  
jirregola t-Telekomunikazzjoni u fl-Att dwar il-Protezzjoni u l-  
Privatezza tad-*Data*.

(2) F'dawn ir-regolamenti, kemm-il darba r-rabta tal-kliem  
ma tkunx titlob xort'ohra:

“Att”, kemm-il darba ma jissemmiex xort'ohra f'dawn ir-  
regolamenti, tfisser l-Att dwar il-Protezzjoni u l-Privatezza tad- Kap. 440.  
*Data*;

“Awtorità” tfisser l-Awtorità ta' Malta dwar il-  
Komunikazzjoni;

“*data* ta' lokazzjoni” tfisser kull *data* pproċessata f'sistema  
ta' telekomunikazzjonijiet, li tkun tindika il-pożizzjoni ġeografika  
tat-tagħmir terminali ta' utent ta' servizz ta' telekomunikazzjonijiet  
li jkun pubblikament disponibbli;

“*data personali*” tfisser kull informazzjoni li tkun tirrigwarda persuna identifikata jew identifikabbli; persuna identifikabbli hi persuna li tkun tista’ tiġi identifikata, direttament jew indirettament, partikolarment b’riferenza għal numru ta’ identifikazzjoni jew għal xi fattur wieħed jew iktar speċiku għall-identità fiżika, fiżjoloġika, mentali, ekonomika, kulturali jew soċjali ta’ dik il-persuna;

“direttorju ta’ abbonati” jew “direttorju” tfisser direttorju ta’ abbonati f’servizz ta’ telekomunikazzjonijiet pubblikament disponibbli, kemm f’ghamla mitbugħa jew elettronika –

(a) li jkun disponibbli għall-pubbliku jew għal sezzjoni tal-pubbliku, jew

(b) informazzjoni li normalment tkun provduta minn servizz ta’ tiftix f’direttorju;

“iprocessar” u “iprocessar ta’ *data personali*” ifissru kull hidma jew għaqda ta’ hidmiet li jsiru dwar *data personali*, sew jekk dan jiġri jew le b’mezzi awtomatiċi, u tinkludi l-kollezzjoni, reġistrazzjoni, organizzazzjoni, ħżin, adattament, bdil, ksib lura, ġbir, użu, żvelar bi trasmissjoni, tixrid jew b’kull mod iehor li bih l-informazzjoni ssir disponibbli, allinjament jew kombinazzjoni, bblukkar, thassir jew qirda ta’ dik id-*data*;

“komunikazzjoni ” tfisser kull informazzjoni skambjata jew trasmessa bejn għadd li jintemm ta’ partijiet permezz ta’ servizz ta’ telekomunikazzjonijiet pubblikament disponibbli. Dan ma jinkludix informazzjoni li tingarr bħala parti minn servizz ta’ xandir lill-pubbliku fuq sistema ta’ telekomunikazzjonijiet hlief sal-limitu li l-informazzjoni tista’ tkun relatata ma’ l-abbonat identifikabbli jew l-utent li jkun qed jirċievi l-informazzjoni;

“kontrollur” tfisser il-kontrollur ta’ *data personali* u jkollha l-istess tifsira bħalma għandha taħt l-Att;

“Kummissarju” tfisser il-Kummissarju għall-Protezzjoni tad-*Data*;

“kunsens” tfisser kunsens minn utent jew abbonat u tikkorrispondi għall-kunsens mogħti minn sugġett ta’ *data* skond l-artikolu 2 ta’ l-Att;

“Ministru” kemm-il darba ma jissemmiex xort’oħra f’dawn ir-regolamenti tfisser il-Ministru responsabbli għall-protezzjoni tad-*data*;

“persuna” tinkludi kull korp magħqud u korp ta’ persuni kemm jekk ikollu kemm jekk ma jkollux personalità ġuridika distinta minn dik tal-membri tiegħu;

“posta elettronika” tfisser kull messagg bil-kitba, vuċi, hoss jew xbieha mibgħut fuq sistema pubblika ta’ telekomunikazzjonijiet li jista’ jinħażen fis-sistema jew fit-tagħmir terminali tar-riċevitur sakemm dan jingabar mir-riċevitur;

“provditur ta’ servizz” tfisser kull persuna li jkollha liċenza valida jew permess biex tipprovi servizz pubbliku ta’ telekomunikazzjonijiet taht l-Att biex jirregola t-Telekomunikazzjoni, jew li tkun registrata taht l-Att biex jirregola t-Telekomunikazzjoni bħala persuna awtorizzata kif hawn qabel imsemmi (sew jekk tkunx jew le wkoll provditur ta’ sistema ta’ telekomunikazzjonijiet);

“provditur ta’ sistema” tfisser kull persuna li jkollha liċenza valida jew permess biex thaddem sistema pubblika ta’ telekomunikazzjonijiet taht l-Att biex jirregola t-Telekomunikazzjoni, jew li tkun registrata taht l-Att biex jirregola t-Telekomunikazzjoni bħala persuna awtorizzata kif hawn qabel imsemmi (sew jekk tkunx jew le wkoll provditur ta’ servizz ta’ telekomunikazzjonijiet);

“servizz b’valur miżjud” tfisser kull servizz li jehtieg l-i-proċessar ta’ traffiku ta’ *data* jew *data* ta’ lokazzjoni li ma jkunx traffiku ta’ *data* l-hinn minn dak li jkun mehtieg għat-trasmissjoni ta’ komunikazzjoni jew l-ikkontjar tiegħu;

“servizz mogħti minn soċjetà ta’ l-informazzjoni” ikollha l-istess tifsira bħalma għandha taht l-Att dwar il-Kummerċ Elettroniku; Kap. 426.

“sistema pubblika ta’ telekomunikazzjonijiet” tfisser sistemi ta’ trasmissjoni u, meta dan ikun japplika, tagħmir ta’ swiċċjar u riżorsi oħra li jkunu jippermettu l-ġarr ta’ sinjali bejn punti terminali definiti bil-fil, bir-radju, b’mezzi ottiċi jew mezzi oħra elettromanjetiċi, li jintużaw, għalkollox jew f’parti minnhom, biex jingħata servizz ta’ telekomunikazzjonijiet li jkun pubblikament disponibbli;

“traffiku ta’ *data*” tfisser kull *data* pproċessata għall-fini tal-ġarr ta’ komunikazzjoni fuq sistema ta’ telekomunikazzjonijiet jew għall-ikkontjar tiegħu;

“utent” tfisser kull persuna naturali li tkun qed tuża servizz ta’ telekomunikazzjonijiet li jkun pubblikament disponibbli, għal finijiet privati jew kummerċjali, mingħajr ma neċessarjament tkun abbonata f’ dak is-servizz.

Applikazzjoni.

**4.** Dawn ir-regolamenti għandhom japplikaw għall-ipproċessar ta’ *data* personali in konnessjoni ma’ l-ghoti ta’ servizz ta’ telekomunikazzjonijiet li jkunu pubblikament disponibbli f’ sistema pubblika ta’ telekomunikazzjonijiet f’ Malta u f’ kull pajjiż iehor hekk kif il-Ministru jista’ wara konsultazzjoni mal-Ministru responsabbli għat-telekomunikazzjonijiet, isemmi b’ avviz fil-Gazzetta.

Kunfidenzjalità tal-komunikazzjonijiet.

**5.** (1) Mingħajr preġudizzju għar-regolament 11 ebda persuna hlief l-utent, ma għandha tisma, tissemma’, taħzen jew tagħmel xi forma ohra ta’ interċettazzjoni jew sorveljanza ta’ komunikazzjonijiet u fi traffiku ta’ *data* relatat, mingħajr il-kunsens ta’ l-utent involut.

(2) Dan ir-regolament ma għandu jolqot ebda reġistrazzjoni ta’ komunikazzjonijiet legalment awtorizzata u traffiku ta’ *data* relatat filwaqt ta’ xi prattika kummerċjali legittima għall-fini li tingieb prova ta’ transazzjoni kummerċjali jew f’ xi komunikazzjoni kummerċjali ohra.

Dhul f’ informazzjoni mahżuna f’ tagħmir terminali.

**6.** (1) L-użu ta’ sistema ta’ telekomunikazzjonijiet għall-hżin ta’ informazzjoni jew biex jinkiseb dhul f’ informazzjoni li tkun mahżuna f’ tagħmir terminali ta’ abbonat jew utent għandu biss ikun permess bil-kundizzjoni li l-abbonat jew utent involuti jiġu pprovduti mill-kontrollur b’ informazzjoni ċara u komprensiva, inkluża informazzjoni dwar il-finijiet ta’ l-ipproċessar, skond l-Att.

(2) L-abbonat jew l-utent ikollhom jedd joġġezzjonaw f’ kull waqt lill-kontrollur għall-ipproċessar ta’ tali *data* u li jirrifjutaw dak l-ipproċessar.

(3) Il-htigiet f’ dan ir-regolament ma għandhomx jipprevjenu l-hżin tekniku jew aċċess għall-uniku fini li ssir jew tiġi faċilitata t-trasmissjoni ta’ komunikazzjoni fuq sistema ta’ telekomunikazzjonijiet jew skond ma jista’ jkun strettament neċessarju sabiex jiġi provdut servizz mogħti minn soċjetà ta’ l-informazzjoni mitlub b’ mod esplicitu mill-abbonat jew mill-utent.

Traffiku ta’ *data*.

**7.** (1) Mingħajr preġudizzju għas-subregolamenti (2), (3) u (4) ta’ dan ir-regolament, traffiku ta’ *data* dwar abbonati u utenti pproċessata għall-fini tat-trasmissjoni ta’ komunikazzjoni u mahżuna minn provdutor ta’ servizz jew minn provdutor ta’ sistema għandha tithassar jew issir anonima meta ma tkunx aktar meħtieġa għall-fini tat-trasmissjoni ta’ komunikazzjoni .

(2) Traffiku ta' *data* mehtieg għall-finijiet ta' l-ikkuntjar ta' abbonat u hlasijiet ta' interkonnessjoni jista' jiġi pproċessat sakemm dak l-ipproċessar ikun biss permissibbli sa tmiem il-perjodu li matulu l-kont jista' jkun legittimament kontestat jew il-hlas mitlub.

(3) Għall-fini ta' bejgh tas-servizzi ta' telekomunikazzjonijiet tiegħu nnifsu jew biex jingħataw servizzi b'valur miżjud lill-abbonat, il-provditur ta' servizz jista' jipproċessa d-*data* msemmija fis-subregolament (1) ta' dan ir-regolament sal-limitu u għal kemm żmien ikun mehtieg għal dawk is-servizzi, sakemm l-abbonat ikun ta l-kunsens tiegħu.

(4) Il-provditur ta' servizz għandu jgħarraf lill-abbonat jew lill-utent bit-tipi ta' traffiku ta' *data* pproċessati u għal kemm żmien idum tali pproċessar għall-finijiet imsemmija fis-subregolament (2) ta' dan ir-regolament u, qabel ma jinkiseb il-kunsens, għall-finijiet imsemmija fis-subregolament (3) ta' dan ir-regolament.

(5) L-ipproċessar ta' traffiku ta' *data* skond is-subregolamenti (1) sa (4) ta' dan ir-regolament għandu jkun ristrett għal persuni li jaġixxu taht l-awtorità tal-provdituri ta' servizz u tal-provditur ta' sistemi li jkunu qed jimmannigġaw l-amministrazzjoni ta' l-ikkuntjar jew tat-traffiku, tiftix li jsir mill-abbonati, l-kxif ta' frodi, l-bejgh ta' servizz ta' telekomunikazzjonijiet tal-provditur jew li jkunu qed jipprovdu servizz b'valur miżjud, u għandu jkun ristrett għal dak li jkun mehtieg għall-finijiet ta' dawk l-attivitajiet.

(6) Ebda haġa f'dan ir-regolament ma għandha tipprekludi l-ġhoti ta' traffiku ta' *data* lil xi awtorità kompetenti għall-finijiet ta' xi liġi li tkun tirrigwarda s-soluzzjoni ta' tilwimiet, partikolarment tilwimiet dwar l-interkonnessjoni u l-ikkuntjar.

**8.** (1) Meta *data* ta' lokazzjoni hlief traffiku ta' *data*, li tkun Data ta' lokazzjoni. tirrigwarda utenti jew abbonati ta' sistema pubblika ta' telekomunikazzjonijiet jew servizzi, tista' tkun ipproċessata, tali *data* tista' biss tkun ipproċessata meta din issir anonima, jew bil-kunsens ta' l-utenti jew abbonati sal-limitu u għal kemm żmien ikun mehtieg għall-ġhoti ta' servizz b'valur miżjud.

(2) Qabel ma jinkiseb il-kunsens ta' l-utenti jew ta' l-abbonati, il-provditur ta' servizz għandu jgħarrafhom b'dan li ġej:

- (a) it-tip ta' *data* ta' lokazzjoni, li ma jkunx traffiku ta' *data*, li jkun se jiġi pproċessat,
- (b) il-finijiet u għal kemm żmien idum l-ipproċessar, u

(ċ) kemm ghandha *d-data* tiġi trasmessa lil terzi għall-fini li jiġi pprovdut is-servizz b'valur miżjud:

Iżda l-utenti jew l-abbonati jistgħu f'kull waqt jirtiraw il-kunsens tagħhom għall-ipproċessar ta' *data* ta' lokazzjoni li ma jkunx traffiku ta' *data*.

(3) Meta jkun inkiseb il-kunsens ta' l-utenti jew ta' l-abbonati għall-ipproċessar ta' *data* ta' lokazzjoni li ma jkunx traffiku ta' *data*, l-utent jew l-abbonat għandu jibqa' jkollu l-possibilità, billi juża mezz sempliċi u bla ebda hłas, li temporanjament jirrofta l-ipproċessar ta' dik id-*data* għal kull konnessjoni mas-sistema jew għal kull trasmissjoni ta' komunikazzjoni .

(4) L-ipproċessar ta' *data* ta' lokazzjoni li ma jkunx traffiku ta' *data* skond is-subregolamenti (1), (2) u (3) ta' dan ir-regolament għandu jkun ristrett għal persuni li jaġixxu taht l-awtorità tal-provditur ta' servizz jew tal-provditur ta' sistema jew tat-terzi li jkunu qed jipprovdu s-servizz b'valur miżjud, u għandu jkun ristrett għal dak li jkun mehtieġ għall-finijiet li jiġi pprovdut is-servizz b'valur miżjud.

Direttorju ta' abbonati.

**9.** (1) Persuna li tipproduċi direttorju ta' abbonati għandha, bla ebda hłas għall-abbonat u qabel ma tiddaħhal xi *data* personali li tkun tirtigwarda lill-abbonat fid-direttorju, tiżgura li -

(a) l-abbonat ikun mgħarraf dwar il-finijiet ta' tali direttorju ta' abbonati u dwar il-possibilitajiet kollha ta' użu bbażati fuq funzjonijiet ta' tiftix li jkun hemm fil-verżjoni elettronika tad-direttorju;

(b) ebda *data* personali ma tkun inkluża f'tali direttorju mingħajr il-kunsens ta' l-abbonat. Meta l-abbonat ikun qed jagħti l-kunsens tiegħu, huwa għandu jstabbilixxi liema *data* għandha tiġi inkluża fid-direttorju, safejn dik id-*data* tkun rilevanti għall-fini tal-direttorju skond ma jiġi stabbilit mill-provditur tas-servizz tad-direttorju. L-abbonati għandhom jiġu mogħtija l-opportunità jivverifikaw, jikkorreġu jew jirtiraw tali *data* personali mid-direttorju; u

(ċ) id-*data* personali f'tali direttorju li tkun tirtigwarda abbonat tkun limitata għal dak li jkun mehtieġ sabiex jiġi identifikat l-abbonat u n-numru lilu allokat, kemm-il darba l-abbonat ma jkunx ta l-kunsens addizzjonali tiegħu lill-provditur tas-servizz tad-direttorju li jkun qed jawtorizzah jinkludi fid-direttorju *data* personali addizzjonali ta' l-abbonat:

Iżda dan hawn qabel imsemmi ghandu japplika biss ghal abbonati li jkunu persuni naturali.

(2) Dan ir-regolament ma ghandux japplika ghal edizzjoni ta' direttorju li jkun diġà gie prodott jew imqiegħed fis-suq f'għamla mitbugħa jew elettronika *off-line* qabel id-dhul fis-seħħ ta' dawn ir-regolamenti.

(3) Meta *d-data* personali ta' abbonati ma' servizzi pubbliċi, fissi jew mobbli, ta' telefonija bil-vuċi jkunu ġew inkluż f'direttorju pubbliku ta' l-abbonati qabel id-dhul fis-seħħ ta' dawn ir-regolamenti, *id-data* personali ta' dawk l-abbonati tista' tibqa' f'dak id-direttorju pubbliku fil-verżjonijiet mitbugħa jew elettroniki tiegħu, inklużi verżjonijiet li jkollhom funzjonijiet ta' tiftix riversivi, kemm-il darba l-abbonati ma jindikawx xort'oħra, wara li tkun ġiet riċevuta l-informazzjoni shiha mingħand il-provditur tas-servizzi tad-direttorju dwar il-finijiet u l-ghazliet skond dan ir-regolament.

**10.** (1) Hadd ma ghandu juża, jew iġieghel li jintuża, xi servizz ta' telekomunikazzjonijiet li jkun pubblikament disponibbli sabiex jagħmel xi komunikazzjoni mhux mixtieqa għall-fini ta' bejgħ dirett permezz ta' -

Komunikazzjonijiet mhux mixtieqa.

- (a) apparat li jsejjah awtomatiku, jew
- (b) apparat li jagħmel *facsimile*, jew
- (c) posta elettronika,

lil xi abbonat, li jkun persuna naturali, kemm-il darba l-abbonat ma jkunx ta l-kunsens tiegħu espliċitu bil-quddiem u bil-miktub li tiġi riċevuta dik il-komunikazzjoni .

(2) Minkejja s-subregolament (1) ta' dan ir-regolament, meta persuna tkun kisbet mingħand l-abbonati tagħha id-dettalji fejn dawn jistgħu jiġu kkuntattjati bil-posta elettronika fir-rigward tal-bejgħ ta' xi prodott jew servizz skond l-Att, dik l-istess persuna tista' tuża dawk id-dettalji għall-bejgħ dirett tal-prodotti jew servizzi tagħha li jkunu ta' xorta simili:

Iżda l-klijenti għandhom jiġu mogħtija l-opportunità li joġġezzjonaw, bla ebda hlas u b'mod faċli u sempliċi, għal dak l-użu ta' dettalji ta' kuntatt elettroniku meta dawn jinġabru u fl-okkażjoni ta' kull messaġġ meta l-abbonat ma jkunx inizjalment irrofta dak l-użu.

(3) Persuna li tuża jew iġġieghel li jintuża xi mezz iehor ta' komunikazzjoni li ma jkunx wiehed minn dawk imsemmija fis-subregolamenti (1) u (2) ta' dan ir-regolament għall-fini ta' bejgħ dirett għandu, b'ebda spiża għall-abbonat, jiżgura li kull tali komunikazzjoni lil abbonat ma tintbagħatx jekk abbonat jitlob li tali komunikazzjonijiet jieqfu:

Iżda dan is-subregolament għandu japplika biss għal dawk l-abbonati li jkunu persuni naturali.

(4) Fil-każijiet kollha tkun ipprojbata l-prattika li tintbagħat posta elettronika għall-finijiet ta' bejgħ dirett, jew billi tintwera identità b'ohra jew tinheba l-identità tal-mittent li f'ismu ssir il-komunikazzjoni, jew li ma jkollhiex indirizz validu li fih ir-riċevitur jista' jibgħat talba li dawk il-komunikazzjonijiet jieqfu.

Meta xi regolamenti ma japplikawx.

**11.** Id-disposizzjonijiet tar-regolamenti 5, 6, 7 u 8 ma għandhomx japplikaw meta liġi tkun speċifikament tippovdi li tinghata informazzjoni bhala miżura mehtieġa fl-interess:

(a) tas-sigurezza nazzjonali;

(b) tad-difiza;

(ċ) tas-sigurezza pubblika;

(d) tal-prevenzjoni, investigazzjoni, kxif u prosekuzzjoni ta' reati kriminali jew amministrattivi, jew ta' kull ksur ta' etika għal professjonijiet regolati;

(e) ta' xi interess importanti, ekonomiku jew finanzjarju, inklużi affarijiet monetarji, dwar l-estimi u ta' tassazzjoni;

(f) ta' xi funzjoni ta' sorveljanza, spezzjon jew regolatorja li tkun konnessa, ukoll okkażjonalment, ma' l-eżerċizzju ta' l-awtorità uffiċjali msemmija fil-paragrafi (ċ), (d) u (e) ta' dan ir-regolament; jew

(g) ta' harsien ta' l-abbonat jew l-utent jew tad-drittijiet u l-libertajiet ta' l-ohrajn.

Kumpens għal nuqqas ta' tharis tar-regolamenti.

**12.** (1) Persuna li ġġarrab xi telf jew hsara minhabba f'xi ksur ta' dawn ir-regolamenti minn xi persuna ohra jkollha jedd li tiehu azzjoni quddiem il-qorti kompetenti fejn tfittex kumpens minn dik il-persuna l-ohra għal dak it-telf jew hsara.

(2) It-terminu ta' skadenza li hemm provdut dwaru fis-subartikolu (2) ta' l-artikolu 46 ta' l-Att ghandu japplika ghal azzjoni taht is-subregolament (1) ta' dan ir-regolament.

**13.** Il-Kummissarju ghandu jizgura t-tharis tad-disposizzjonijiet ta' dawn ir-regolamenti. Infurzar.

**14.** Persuna li tikser jew tonqos milli thares dawn ir-regolamenti tista' tehel penali amministrattiva ta' mhux iżjed minn elf lira, liema piena ghandha tiġi stabbilita u imposta mill-Kummissarju. Penali u sanzjonijiet amministrattivi.

**15.** Persuna aggravata minn deċiżjoni li tittiehed mill-Kummissarju skond dawn ir-regolamenti u li jkollha interess legali li tikkontesta tali deċiżjoni jista' jappella lit-Tribunal ta' l-Appelli dwar il-Protezzjoni ta' *Data*. Appelli minn deċiżjonijiet tal-Kummissarju.

**16.** Il-Kummissarju jista' jikseb il-parir ta' u ghandu, meta jkun adatt, jikkonsulta lill-Awtorità fi-eżerċizzju tal-funzjonijiet tiegħu taht dawn ir-regolamenti. Parir ta' l-Awtorità u konsultazzjoni magħha.

**17.** Meta jkun allegat li jkunu inkisru dawn ir-regolamenti, kemm l-Awtorità kemm persuna aggravata tista' titlob lill-Kummissarju jeżerċita l-funzjonijiet tiegħu ta' infurzar għar-rigward ta' dak il-ksur. Iżda ebda haġa f'dan ir-regolament ma ghandha tkun interpretata bhala li tillimita l-poteri diskrezzjonali tal-Kummissarju. Jitlob li l-Kummissarju jeżerċita l-funzjonijiet tiegħu ta' infurzar.

**L.N. 16 of 2003**

**DATA PROTECTION ACT  
(CAP. 440)**

**Processing of Personal Data (Telecommunications Sector)  
Regulations, 2003**

IN exercise of the powers conferred by article 54 of the Data Protection Act, the Minister of Justice and Local Government, after consultation with the Data Protection Commissioner, has made the following regulations:–

Citation.                   **1.** The title of these regulations is the Processing of Personal Data (Telecommunications Sector) Regulations, 2003.

Commencement.           **2.** These regulations shall come into force as the Minister may by order in the Gazette determine and different dates may be appointed in respect of different regulations.

Definitions.               **3.** (1) Unless otherwise stated in these regulations, the definitions in the Telecommunications (Regulation) Act and the Data Protection Act shall apply.

(2) In these regulations, unless the context otherwise requires:

Cap. 440.                   “Act” unless otherwise stated in these regulations, means the Data Protection Act;

“Authority” means the Malta Communications Authority;

“Commissioner” means the Data Protection Commissioner;

“communication” means any information exchanged or transmitted between a finite number of parties by means of a publicly available telecommunications service. This does not include any information conveyed as part of a broadcasting service to the public over a telecommunications system except to the extent that the information can be related to the identifiable subscriber or user receiving the information;

“consent” means consent by a user or subscriber and corresponds to the consent given by a data subject in accordance with article 2 of the Act;

“controller” means the controller of personal data and shall have the same meaning as under the Act;

“directory of subscribers” or “directory” means a directory of subscribers to publicly available telecommunications services, whether in printed form or in electronic form -

(a) which is available to the public or a section of the public, or

(b) information which is normally provided by a directory enquiry service;

“electronic mail” means any text, voice, sound or image message sent over a public telecommunications system which can be stored in the system or in the recipient’s terminal equipment until it is collected by the recipient;

“information society service” shall have the same meaning as under the Electronic Commerce Act; Cap. 426.

“location data” means any data processed in a telecommunications system, indicating the geographic position of the terminal equipment of a user of a publicly available telecommunications service;

“Minister” unless otherwise stated in these regulations means the Minister responsible for data protection;

“person” includes any body corporate and any body of persons whether or not it has a legal personality distinct from that of its members;

“personal data” means any information relating to an identified or identifiable person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to that person’s physical, physiological, mental, economic, cultural or social identity;

“processing” and “processing of personal data” mean any operation or set of operations which is taken in regard to personal data, whether or not it occurs by automatic means, and includes the collection, recording, organisation, storage, adaptation, alteration, retrieval, gathering, use, disclosure by transmission, dissemination or otherwise making information available,

alignment or combination, blocking, erasure or destruction of such data;

“public telecommunications system” means transmission systems and, where applicable, switching equipment and other resources which permit the conveyance of signals between defined termination points by wire, by radio, by optical or by other electromagnetic means, which are used, in whole or in part, for the provision of publicly available telecommunications services;

“service provider” means any person who holds a valid licence or permit to provide a public telecommunications service under the Telecommunications (Regulation) Act, or is registered under the Telecommunications (Regulation) Act as a person authorised as aforesaid (whether or not he is also a telecommunications system provider);

“system provider” means any person who holds a valid licence or permit to operate a public telecommunications system under the Telecommunications (Regulation) Act, or is registered under the Telecommunications (Regulation) Act as a person authorised as aforesaid (whether or not he is also a telecommunications service provider);

“traffic data” means any data processed for the purpose of the conveyance of a communication on a telecommunications system or for the billing thereof;

“user” means any natural person using a publicly available telecommunications service, for private or business purposes, without necessarily having subscribed to such service;

“value added service” means any service which requires the processing of traffic data or location data other than traffic data beyond what is necessary for the transmission of a communication or the billing thereof.

Application.

**4.** These regulations shall apply to the processing of personal data in connection with the provision of publicly available telecommunications services in public telecommunications systems in Malta and any other country as the Minister may after consultation with the Minister responsible for telecommunications, designate by notice in the Gazette.

**5.** (1) Without prejudice to regulation 11 no person other than the user, shall listen, tap, store or undertake any other form of interception or surveillance of communications and of any related traffic data, without the consent of the user concerned.

Confidentiality of communications.

(2) This regulation shall not affect any legally authorised recording of communications and the related traffic data in the course of lawful business practice for the purpose of providing evidence of a commercial transaction or of any other business communication.

**6.** (1) The use of telecommunications systems to store information or to gain access to information stored in the terminal equipment of a subscriber or user shall only be allowed on condition that the subscriber or user concerned is provided by the controller with clear and comprehensive information, including information about the purposes of the processing, in accordance with the Act.

Access to information stored in terminal equipment.

(2) The subscriber or user shall be entitled to object at any time to the controller to the processing of such data and to refuse such processing.

(3) The requirements in this regulation shall not prevent the technical storage or access for the sole purpose of carrying out or facilitating the transmission of a communication over a telecommunications system or as may be strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

**7.** (1) Without prejudice to sub-regulations (2), (3) and (4) of this regulation, traffic data relating to subscribers and users processed for the purpose of the transmission of a communication and stored by a service provider or by a system provider shall be erased or made anonymous when it is no longer needed for the purpose of the transmission of a communication.

Traffic data.

(2) Traffic data necessary for the purposes of subscriber billing and interconnection payments may be processed provided that such processing shall only be permissible up to the end of the period during which the bill may lawfully be challenged or payment pursued.

(3) For the purpose of marketing its own telecommunications services or for the provision of value added services to the subscriber, the service provider may process the data referred to in sub-regulation (1) of this regulation to the extent and for the duration necessary for such services, provided the subscriber has given his consent.

(4) The service provider shall inform the subscriber or user of the types of traffic data that are processed and of the duration of such processing for the purposes mentioned in sub-regulation (2) of this regulation and, prior to obtaining consent, for the purposes mentioned in sub-regulation (3) of this regulation.

(5) Processing of traffic data in accordance with sub-regulations (1) to (4) of this regulation shall be restricted to persons acting under the authority of the service providers and of the system providers handling billing or traffic management, customer enquiries, fraud detection, marketing the telecommunications services of the provider or providing a value added service, and shall be restricted to what is necessary for the purposes of such activities.

(6) Nothing in this regulation shall preclude the furnishing of traffic data to any competent authority for the purposes of any law relating to the settling of disputes, in particular interconnection and billing disputes.

Location data.

**8.** (1) Where location data other than traffic data, relating to users or subscribers of public telecommunications systems or services can be processed, such data may only be processed when it is made anonymous, or with the consent of the users or subscribers to the extent and for the duration necessary for the provision of a value added service.

(2) Prior to obtaining the consent of the users or subscribers, the service provider shall inform them of the following:

- (a) the type of location data other than traffic data, which shall be processed,
- (b) the purposes and duration of the processing, and
- (c) whether the data shall be transmitted to a third party for the purpose of providing the value added service:

Provided that at any time users or subscribers may withdraw their consent for the processing of location data other than traffic data.

(3) Where consent of the users or subscribers has been obtained for the processing of location data other than traffic data, the user or subscriber shall continue to have the possibility, using a simple means and free of charge, of temporarily refusing the processing of such data for each connection to the system or for each transmission of a communication.

(4) The processing of location data other than traffic data in accordance with sub-regulations (1), (2) and (3) of this regulation shall be restricted to persons acting under the authority of the service provider or of the system provider or of the third party providing the value added service, and shall be restricted to what is necessary for the purposes of providing the value added service.

**9.** (1) Any person who produces a directory of subscribers shall, without charge to the subscriber and before any personal data relating to the subscriber is included in the directory, ensure that -

Directory of subscribers.

(a) the subscriber is informed about the purposes of such a directory of subscribers and of any usage possibilities based on search functions embedded in the electronic version of the directory;

(b) no personal data are included in such a directory without the consent of the subscriber. In giving his consent the subscriber shall determine which data is to be included in the directory, to the extent that such data is relevant for the purpose of the directory as determined by the provider of the directory service. Subscribers shall be given the opportunity to verify, correct or withdraw such personal data from the directory; and

(c) the personal data in such a directory relating to a subscriber is limited to what is necessary to identify the subscriber and the number allocated to him, unless the subscriber has given his additional consent to the provider of the directory service authorising him to include in the directory additional personal data of the subscriber:

Provided that the above shall apply only to subscribers who are natural persons.

(2) This regulation shall not apply to an edition of a directory that has been already produced or placed on the market in printed or off-line electronic form before the coming into force of these regulations.

(3) Where the personal data of subscribers to fixed or mobile public voice telephony services has been included in a public subscriber directory before the coming into force of these regulations, the personal data of such subscribers may remain in this public directory in its printed or electronic versions, including versions with reverse search functions, unless subscribers indicate otherwise, after having received complete information from the provider of the directory services about the purposes and options in accordance with this regulation.

Unsolicited  
communications.

**10.** (1) A person shall not use, or cause to be used, any publicly available telecommunications service to make an unsolicited communication for the purpose of direct marketing by means of -

- (a) an automatic calling machine, or
- (b) a facsimile machine, or
- (c) electronic mail,

to a subscriber, who is a natural person, unless the subscriber has given his prior explicit consent in writing to the receipt of such a communication.

(2) Notwithstanding sub-regulation (1) of this regulation, where a person has obtained from his customers their contact details for electronic mail in relation to the sale of a product or a service, in accordance with the Act that same person may use such details for direct marketing of its own similar products or services:

Provided that customers shall be given the opportunity to object, free of charge and in an easy and simple manner, to such use of electronic contact details when they are collected and on the occasion of each message where the customer has not initially refused such use.

(3) A person who uses or causes to be used any other means of communication other than those stated in sub-regulations (1) and (2) of this regulation for the purpose of direct marketing shall, at no charge to the subscriber, ensure that any such communications to a subscriber are not sent if the subscriber requests that such communications cease:

Provided that this sub-regulation shall apply only to subscribers who are natural persons.

(4) In all cases the practice of sending electronic mail for the purposes of direct marketing, disguising or concealing the identity of the sender on whose behalf the communication is made, or without a valid address to which the recipient may send a request that such communications cease, shall be prohibited.

Non-applicability of  
certain regulations.

**11.** The provisions of regulations 5, 6, 7 and 8 shall not apply when a law specifically provides for the provision of information as a necessary measure in the interest of:

- (a) national security;

(b) defence;

(c) public security;

(d) the prevention, investigation, detection and prosecution of criminal or administrative offences, or of breaches of ethics for regulated professions;

(e) an important economic or financial interest including monetary, budgetary and taxation matters;

(f) a monitoring, inspection or regulatory function connected, even occasionally, with the exercise of official authority referred to in paragraphs (c), (d) and (e) of this regulation; or

(g) the protection of the subscriber or user or of the rights and freedoms of others.

**12.** (1) A person who suffers any loss or damage because of any contravention of these regulations by any other person shall be entitled to take action before the competent court seeking compensation from that other person for that loss or damage.

Compensation for failure to comply with regulations.

(2) The period of limitation provided for in subarticle (2) of article 46 of the Act shall apply to an action under sub-regulation (1) of this regulation.

**13.** The Commissioner shall ensure compliance with the provisions of these regulations.

Enforcement.

**14.** Any person who contravenes or fails to comply with these regulations shall be liable to an administrative fine not exceeding one thousand liri, which fine shall be determined and imposed by the Commissioner.

Administrative fines and sanctions.

**15.** Any person aggrieved by a decision taken by the Commissioner in accordance with these regulations and having a legal interest to contest such a decision may appeal to the Data Protection Appeals Tribunal.

Appeals from decisions of the Commissioner.

**16.** The Commissioner may seek the advice of, and shall where appropriate consult with, the Authority in the exercise of his functions under these regulations.

Advice and consultation with the Authority.

Request that the  
Commissioner  
exercise his  
enforcement  
functions.

**17.** Where it is alleged that any of these regulations have been contravened, the Authority or any aggrieved person may request the Commissioner to exercise his enforcement functions in respect of that contravention:

Provided that nothing in this regulation shall be interpreted as a limitation on the discretionary powers of the Commissioner.