

A.L. 198 ta' l-2008

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

Regolamenti ta' l-2008 li jemendaw ir-Regolamenti dwar l-Ipproċessar ta' *Data* Personali fis-Settur tal-Komunikazzjonijiet Elettronici

BIS-SAHHA tas-setgħat mogħtija bl-artikolu 54 ta' l-Att dwar Il-Protezzjoni u l-Privatezza tad-*Data*, il-Ministru responsabbli għall-protezzjoni tad-*data*, wara konsultazzjoni mal-Kummissarju għall-Protezzjoni tad-*Data*, għamel ir-regolamenti li ġejjin:

1. It-titolu ta' dawn ir-regolamenti huwa Regolamenti ta' l-2008 li jemendaw ir-Regolamenti dwar l-Ipproċessar ta' *Data* Personali fis-Settur tal-Komunikazzjonijiet Elettronici u għandhom jinqraw u jinftehmha waħda mar-Regolamenti dwar l-Ipproċessar ta' *Data* Personali fis-Settur tal-Komunikazzjonijiet Elettronici, hawn iżjed ' il quddiem imsejha "ir-regolamenti prinċipali".

Titolu.

A.L. 16 ta' 2003.

2. Minnufih wara r-regolament 3 tar-regolamenti prinċipali għandu jżied it-titolu ġdid li ġej:

Żieda ta' titolu fir-regolamenti prinċipali.

"Taqsimha I – Ipproċessar ta' *Data* Personali".

3. Minnufih wara r-regolament 17 tar-regolamenti prinċipali għandha jżied dan li titizdied it-Taqsimha II ġdida li ġejja :

Żieda ta' Taqsimha II ġdida fir-regolamenti prinċipali.

"Taqsimha II – Żamma ta' *Data*

Tifsir.

18. F'din it-Taqsimha, sakemm ir-rabta tal-kliem ma tehtiegħx xort'ohra –

"abbonat" tfisser kull persuna fiżika jew ġuridika li tkun parti kontraenti f'kuntratt mal-provditur tal-komunikazzjonijiet elettronici disponibbli għall-pubbliku jew ta' netwerk ta' komunikazzjonijiet pubbliċi, għall-provvista ta' dawk is-servizzi, u tinkludi klijent li jhallas minn qabel ta' dak il-provditur;

"*data*" tfisser *data* ta' traffiku u *data* ta' lokalità u d-*data* neċessarja biex jiġi identifikat l-abbonat jew l-utent;

"ID taċ-ċellula" tfisser l-identità taċ-ċellula minn fejn giet oriġinata telefonata mobbli jew li fiha intemmet;

"ID ta' l-utent" tfisser identifikatur uniku mogħti lin-nies meta jabbonaw ma' jew jirregistraw ma' servizz ta' aċċess għall-Internet jew servizz ta' komunikazzjonijiet permezz ta' l-Internet;

"Pulizija" tfisser il-Kummissarju tal-Pulizija u tinkludi kull uffiċjal tal-Pulizija mahtur mill-Kummissarju sabiex jaġixxi f'ismu;

Kap. 399.

"reati gravi" tfisser kull reat li l-piena tagħhom hija priġunerija ta' mhux anqas minn sena u għall-finijiet ta' dawn ir-regolamenti jinkludu r-reati msemmija fl-artikoli 35(1)(d) u 35A ta' l-Att biex jirregola Komunikazzjoni Elettronici;

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"servizz tas-sigurtà" tfisser is-Servizz ta' Sigurtà kif imfisser bl-Att dwar is-Servizz tas-Sigurtà;

"servizz tat-telefon" tfisser telefonati (inkluż telefonati bil-lehen, messagġi bil-lehen u telefonati tad-*data* u konferenza), servizzi supplimentarji (inkluż t-tmexxija 'l quddiem ta' telefonata u t-trasferiment ta' telefonata) u servizzi ta' messagġi u servizzi *multi-media* (inkluż servizzi ta' messagġi qosra, servizzi imtejba tal-*media* u servizzi *multi-media*);

"tentattiv ta' telefonata mingħajr suċċess" tfisser komunikazzjoni fejn telefonata tkun giet ikkomunikata b'suċċess iżda mhux imwiegħba jew fejn kien hemm intervent mit-tmexxija tan-netwerk;

"utent" tfisser kull entità legali jew persuna fiżika li jagħmlu użu minn servizz ta' komunikazzjonijiet elettronici disponibbli għall-pubbliku, għal skopijiet privati jew ta' negozju, mingħajr ma jkunu neċessarjament abbonati ma' dak is-servizz.

Obbligu li tinzamm id-*data*.

19. (1) Bla hsara għad-disposizzjonijiet tar-regolamenti 5, 6, 7 u 8, provditur ta' servizzi ta' komunikazzjonijiet elettronici disponibbli għall-pubbliku jew ta' netwerk ta' komunikazzjonijiet pubbliċi għandu iżomm id-*data* speċifikata fir-regolament 21 safejn dik id-*data* hija maħluqa jew ipproċessata minn dawk il-provdituri fil-kors tal-provvista tas-servizzi ta' komunikazzjonijiet in kwistjoni.

(2) L-obbligu li tinzamm id-*data* kif imsemmi fis-subregolament (1) għandu, safejn dik id-*data* hija maħluqa jew ipproċessata, u maħzuna (fir-rigward tad-*data* tat-telefonija) jew irregistrata (fir-rigward tad-*data* ta' l-internet) japplika għat-tentattivi ta' telefonati mingħajr suċċess:

Izda, dan l-obbligu ma japplikax fir-rigward ta' telefonati mingħajr konnessjoni.

(3) Ma tista' tinzamm ebda *data* li tikxef il-kontenut ta' xi komunikazzjoni skond dawn ir-regolamenti.

Aċċess għad-*data*.

20. (1) Id-*data* miżmuma taħt din it-Taqsima tiġi żvelata biss lill-Pulizija jew lis-Servizzi tas-Sigurtà, skond il-każ, meta dik id-*data* tkun meħtieġa għall-iskop ta' sħarriġ, kxif jew prosekuzzjoni ta' reati gravi.

(2) Meta tkun meħtieġa id-*data* miżmuma taħt din it-Taqsima, dik id-*data* tingħata minn provditur ta' servizz ta' komunikazzjonijiet elettronici disponibbli għall-pubbliku jew ta' netwerk ta' komunikazzjonijiet pubbliċi, lil min tintalab, f'forma li tinqara u b'mod li tkun tidher u tinqara.

(3) Talba għal *data* issir bil-miktub u tkun ċara u speċifika:

Izda meta d-*data* tkun meħtieġa b'urġenza, dik it-talba tista' issir bil-fomm, hekk izda it-talba bil-miktub issir ma' l-ewwel opportunità.

(4) Id-*data* miżmuma taħt din it-Taqsima, għandha, wara li ssir it-talba, tingħata mingħajr dewmien.

Kategoriji ta' *data* li għandha tinzamm.

21. Il-Provdituri tas-Servizz huma meħtieġa li jzommu dawn il-kategoriji ta' *data* li ġejjin:

(1) *data* meħtieġa sabiex jiġi rintraċċat u identifikat is-sors ta' servizz ta' komunikazzjoni:

(a) li għandu x'jaqsam mat-telefonija ta' netwerk ta' linji fissi u mobbli:

(i) in-numru tat-telefonata li diehla;

(ii) l-isem u indirizz ta' l-abbonat jew ta' l-utent registrat;

(b) li għandu x'jaqsam ma' l-aċċess għall-Internet, posta elettronika bl-Internet u it-telefonija ta' l-Internet:

(i) l-ID mogħti lill-utent;

(ii) in-numru ta' l-ID tat-telefon użat mogħti lil kull komunikazzjoni li tidhol fin-netwerk tat-telefonija pubblika;

(iii) l-isem u l-indirizz ta' l-abbonat jew l-utent registrat lil lilu jingħata indirizz tal-Protokoll ta' l-Internet, ID għall-utent jew numru tat-telefon meta ssir il-komunikazzjoni;

(2) *data* meħtieġa sabiex tiġi identifikata d-destinazzjoni ta' komunikazzjoni:

(a) li għandha x'taqsam ma' netwerk tal-linji fissi tat-telefon u mat-telefonija mobbli:

(i) in-numru tat-telefon jew numri ddajljati jew magħmula u, fil-kazijiet li għandhom x'jaqsmu ma' servizzi supplimentarji bħal ma huma tmexxija 'l quddiem ta' telefonata jew trasferiment ta' telefonata, in-numru, jew numri li fihom it-telefonata titmexxa;

(ii) l-isem u indirizz ta' l-abbonat jew ta' l-utent registrat;

(b) li għandha x'taqsam mal-posta elettronika bl-Internet u mat-telefonija bl-Internet:

(i) l-ID ta' l-utent jew in-numru tat-telefon ta' min huwa mistenni li jirċievi telefonata bl-Internet;

(ii) l-isem u l-indirizz ta' l-abbonat jew ta' l-utent registrat u l-ID ta' l-utent ta' min huwa mistenni li jirċievi l-komunikazzjonijiet;

(3) *data* meħtieġa sabiex jiġi identifikat id-data, il-ħin u kemm damet il-komunikazzjoni:

(a) dwar in-netwerk tal-linji fissi tat-telefon u telefonija mobbli, id-data u l-ħin ta' meta bdiet u intemmet il-komunikazzjoni;

(b) li għandha x'taqsam ma' l-aċċess għall-Internet, posta elettronika bl-Internet u telefonija bl-Internet:

(i) id-data u l-ħin ta' meta kien hemm id-dħul fi u l-ħruġ barra mis-servizz ta' aċċess għall-Internet, imsejsa fuq ċerta zona ta' ħin, flimkien ma' l-indirizz tal-Protokoll ta' l-Internet, kemm dinamiku jew statiku, mogħti mill-provditur ta' servizz ta' aċċess għall-Internet għal komunikazzjoni, u l-ID ta' l-utent ta' l-abbonat jew ta' l-utent registrat;

(ii) id-data u l-ħin ta' d-dħul fi u ħruġ min servizz tal-posta elettronika bl-Internet jew servizz tat-telefonija bl-Internet, imsejsa fuq ċerta zona ta' ħin;

(4) *data* meħtieġa sabiex jiġi identifikat it-tip ta' komunikazzjoni:

(a) dwar network tal-linji fissi tat-telefon u telefonija mobbli, is-servizz tat-telefon li ġie użat;

(b) dwar il-posta elettronika bl-Internet u it-telefonija bl-Internet, is-servizz ta' l-Internet użat;

(5) *data* meħtieġa sabiex jiġi identifikat l-apparat tal-komunikazzjoni ta' l-utenti jew dak li jidher li huwa l-apparat tagħhom:

(a) dwar in-netwerk tal-linji fissi tat-telefon, in-numri tat-telefon min fejn saret it-telefonata u n-numri tat-telefon li irċieva t-telefonata;

(b) dwar it-telefonija mobbli:

(i) in-numri tat-telefon min fejn saret it-telefonata u n-numri tat-telefon li irċieva t-telefonata;

(ii) l-Identità ta' l-Abbonat tat-Telefonija Internazzjonali Mobbli ta' min jagħmel it-telefonata;

(iii) l-Identità ta' l-Apparat tat-Telefonija Internazzjonali Mobbli ta' min jagħmel it-telefonata;

(iv) l-Identità ta' l-Abbonat tat-Telefonija Internazzjonali Mobbli ta' min jirċevi it-telefonata;

(v) l-Identità ta' l-Apparat tat-Telefonija Internazzjonali Mobbli ta' min jirċevi it-telefonata;

(vi) fil-każ tas-servizzi anonimi imħallsa minn qabel, id-data u l-ħin ta' l-attivazzjoni tal-bidu tas-servizz u t-tikketta tal-post (ID taċ-ċellula) minn fejn is-servizzi ġew attivati;

(ċ) dwar l-aċċess għall-Internet, posta elettronika bl-Internet u telefonija bl-Internet:

(i) in-numri tat-telefon minn fejn issir it-telefonata għall-aċċess ta' *dial up*;

(ii) il-linja diġitali ta' l-abbonat jew il-punt l-ieħor ta' l-aħħar ta' min holoq il-komunikazzjoni;

(6) *data* meħtieġa sabiex jiġi identifikat il-post fejn jinsab l-apparat għall-komunikazzjoni mobbli:

(a) it-tikketta tal-post (ID taċ-ċellula) meta tinbeda l-komunikazzjoni;

(b) *data* li tidentifika l-post ġeografiku taċ-ċelluli b'riferenza għat-tikketti tagħhom tal-post (ID taċ-ċellula) matul iż-żmien li fih tinżamm id-*data* tal-komunikazzjonijiet.

Għal kemm tinżamm id-*data*.

22. Il-kategoriji ta' *data* speċifikati fir-regolament 21 jinżammu mill-provdituri tas-servizz għal perjodi li ġejjin:

(a) *data* ta' komunikazzjonijiet marbuta ma' l-Access għall-Internet u posta elettronika bl-Internet għal żmien sitt xhur minn meta issir il-komunikazzjoni;

(b) *data* ta' komunikazzjonijiet li għandha x'taqsam man-netwerk tal-linji fissi tat-telefon, telefonija mobbli u telefonija bl-Internet għal żmien sena minn meta issir il-komunikazzjoni.

Ordni ta' konservazzjoni.

23. (1) Il-Pulizija tista', b'żieda mat-talba għal *data* skond ir-regolament 20, tohrog ordni ta' konservazzjoni fir-rigward tad-*data*.

(2) L-ordni ta' konservazzjoni tiġi innotifikata lill-provditur tas-servizz matul iż-żmien għaž-żamma applikabbli skond ir-regolament 22.

(3) Meta tinhareg ordni ta' konservazzjoni, il-provditur tas-servizz għandu jzomm id-*data* -

(a) jew għal żmien sitt xhur b'żieda maż-żmien applikabbli oriġinali jew għal żmien ta' zamma applikabbli kif imtawwal, liema żmien flimkien, minghajr ordni ta' Magistrat jew ta' qorti kompetenti, ma jistax jiġi imtawwal għal aktar minn sentejn; jew

(b) meta ikunu inbdew proċeduri kriminali fiż-żmien applikabbli għaž-żamma jew f'dak iż-żmien kif imtawwal skond ill-paragrafu (a), għal dak iż-żmien li jista' jkun meħtieġ għat-tmiem tal-proċeduri kriminali fejn id-*data* tkun meħtieġa li tingieb bhala prova; dak it-tmiem jitqies li jseħh meta sentenza fil-proċeduri issir finali u konkluziva,

skond liema minnhom ikun l-itwal żmien.

Sigurtà tad-*data*.

24. Id-*data* miżmuma taht din it-Taqsima għandha thares il-prinċipji tas-sigurtà tad-*data* imwaqqfa taht l-Att u għandha ta' l-anqas -

(a) tkun ta' l-istess kwalità u soġġetta għall-istess sigurtà u harsien bhad-*data* fuq in-netwerk;

(b) tkun soġġetta għal miżuri xierqa tekniċi u ta' organizzazzjoni sabiex iharsu *d-data* mill-qirda aċċidentali jew illegali, telf aċċidentali jew bdil, jew hażna, proċessar, aċċess jew kxif illegali;

(ċ) tkun soġġetta għal miżuri xierqa tekniċi u ta' organizzazzjoni sabiex jiżguraw li jistgħu jidhlu fiha biss persunal b'awtorizzazzjoni speċjali;

(d) hlief għal dik *id-data* li tkun soġġetta għal ordni ta' konservazzjoni, tinqered fit-tmien iż-żmien applikabbli għaž-żamma.

Statistiċi.

25. (1) Il-provdituri tas-servizz għandhom, fir-rigward taż-żamma tad-*data* taht din it-Taqsima, jipprovdu fuq bażi annwali, it-tagħrif li ġej lill-Kummissarju għall-Protezzjoni tad-*Data* -

(a) il-każijiet li fihom ingħata it-tagħrif taht din it-Taqsima;

(b) iż-żmien li għadda bejn *id-data* ta' meta ġiet miżmuma *d-data* u *d-data* meta ġiet mitluba t-tramissjoni tad-*data*;

(ċ) kull każ fejn ma setgħux jintlaqgħu it-talbiet għad-*data*.

(2) Kull statistika mogħtija taht dan ir-regolament m'għandux ikun fiha xi *data* personali."

L.N. 198 of 2008

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

**Processing of Personal Data
(Electronic Communications Sector) (Amendment)
Regulations, 2008**

IN EXERCISE of the powers conferred by article 54 of the Data Protection Act, the Minister responsible for data protection, after consultation with the Data Protection Commissioner, has made the following regulations:

1. The title of these regulations is the Processing of Personal Data (Electronic Communications Sector) (Amendment) Regulations, 2008 and they shall be read and construed as one with the Processing of Personal Data (Electronic Communications Sector) Regulations, 2003, hereinafter referred to as "the principal regulations".

Title.
L.N. 16 of 2003.

2. Immediately after regulation 3 of the principal regulations there shall be added the following title:

Addition of title to the principal regulations.

"Part I – Processing of Personal Data".

3. Immediately after regulation 17 of the principal regulations there shall be added the following new Part II:

Adds new Part II to the principal regulations.

"Part II – Retention of Data

Definitions.

18. In this Part, unless the context otherwise requires -

"cell ID" means the identity of the cell from which a mobile telephony call originated or in which it terminated;

"data" means traffic data and location data and the related data necessary to identify the subscriber or user;

"Police" means the Commissioner of Police and includes any officer of the Police designated by the Commissioner to act on his behalf;

"security service" means the Security Service as defined in the Security Service Act;

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"serious crime" means any crime which is punishable by a term of imprisonment of not less than one year and for the purposes of these regulations includes the crimes mentioned in articles 35(1)(d) and 35A of the Electronic Communications (Regulation) Act;

"subscriber" means any natural or legal person who is party to a contract with the provider of publicly available electronic communications services or of a public communications network, for the supply of such services, and includes a pre-paid customer of such provider;

"telephone service" means calls (including voice, voicemail and conference and data calls), supplementary services (including call forwarding and call transfer) and messaging and multi-media services (including short message services, enhanced media services and multi-media services);

"unsuccessful call attempt" means a communication where a telephone call has been successfully connected but not answered or there has been a network management intervention;

"user" means any legal entity or natural person using a publicly available electronic communications service, for private or business purposes, without necessarily having subscribed to that service;

"user ID" means a unique identifier allocated to persons when they subscribe to or register with an Internet access service or Internet communications service.

Obligation to retain data.

19. (1) Notwithstanding the provisions of regulations 5, 6, 7 and 8, a service provider of publicly available electronic communications services or of a public communications network shall retain the data specified in regulation 21 to the extent that those data are generated or processed by such providers in the process of supplying the communications services concerned.

(2) The obligation to retain the data as provided in sub-regulation (1) shall, to the extent that such data are generated or processed, and stored (as regards telephony data) or logged (as regards internet data) be applicable to unsuccessful call attempts:

Provided that such obligation shall not be applicable in relation to unconnected calls.

(3) No data revealing the content of any communication may be retained pursuant to these regulations.

Access to data.

20. (1) Data retained under this Part shall be disclosed only to the Police or to the Security Service, as the case may be, where such data is required for the purpose of the investigation, detection or prosecution of serious crime.

(2) When data retained under this Part is required, such data shall be provided by a service provider of publicly available electronic communications services or of a public communications network, from whom it is required, in an intelligible form and in such a way that it is visible and legible.

(3) A request for data shall be made in writing and shall be clear and specific:

Provided that where the data is urgently required, such request may be made orally, so however that the written request shall be made at the earliest opportunity.

(4) Data retained under this Part shall, following the request, be provided without undue delay.

Categories of data to be retained.

21. Service Providers are required to retain the following categories of data:

(1) data necessary to trace and identify the source of a communication:

(a) concerning fixed network telephony and mobile telephony:

(i) the calling telephone number;

(ii) the name and address of the subscriber or registered user;

(b) concerning Internet access, Internet e-mail and Internet telephony:

(i) the user ID allocated;

(ii) the used ID telephone number allocated to any communication entering the public telephone network;

(iii) the name and address of the subscriber or registered user to whom an Internet-Protocol address, user ID or telephone number was allocated at the time of the communication;

(2) data necessary to identify the destination of a communication:

(a) concerning fixed network telephony and mobile telephony:

(i) the telephone number or numbers dialled or called and, in cases involving supplementary services such as call forwarding or call transfer, the number, or numbers to which the call is routed;

(ii) the name and address of the subscriber or registered user;

(b) concerning Internet e-mail and Internet telephony:

(i) the user ID or telephone number of the intended recipient of an Internet telephony call;

(ii) the name and address of the subscriber or registered user and user ID of the intended recipient of the communications;

(3) data necessary to identify the date, time and duration of a communication:

(a) concerning fixed network telephony and mobile telephony, the date and time of the start and end of the communication;

(b) concerning Internet access, Internet e-mail and Internet telephony:

(i) the date and time of the log-in and log-off of the Internet access service, based on a certain time zone, together with the Internet Protocol address, whether dynamic or static, allocated by the Internet access service provider to a communication, and the user ID of the subscriber or registered user;

(ii) the date and time of the log-in and log-off of the Internet e-mail service or Internet telephony service, based on a certain time zone;

(ii) the date and time of the log-in and log-off of the Internet e-mail service or Internet telephony service, based on a certain time zone;

(4) data necessary to identify the type of communication:

(a) concerning fixed network telephony and mobile telephony, the telephone service used;

(b) concerning Internet e-mail and Internet telephony, the Internet service used;

(5) data necessary to identify users' communication equipment or what purports to be their equipment:

(a) concerning fixed network telephony, the calling and called telephone numbers;

(b) concerning mobile telephony:

(i) the calling and called telephone numbers;

(ii) the International Mobile Subscriber Identity of the calling party;

(iii) the International Mobile Equipment Identity of the calling party;

(iv) the International Mobile Subscriber Identity of the called party;

(v) the International Mobile Equipment Identity of the called party;

(vi) in the case of pre-paid anonymous services, the date and time of the initial activation of the service and the location label (Cell ID) from which the services was activated;

(c) concerning Internet access, Internet e-mail and Internet telephony:

(i) the calling telephone numbers for dial-up access;

(ii) the digital subscriber line or other end point of the originator of the communication;

(6) data necessary to identify the location of mobile communication equipment:

(a) the location label (Cell ID) at the start of the communication;

(b) data identifying the geographic location of cells by reference to their location labels (Cell ID) during the period for which communications data are retained.

Periods of retention.

22. The categories of data specified in regulation 21 shall be retained by the service providers for the following periods:

(a) communications data relating to Internet Access and Internet e-mail for a period of six months from the date of communication;

(b) communications data concerning fixed network telephony, mobile telephony and Internet telephony for a period of one year from the date of communication.

Conservation order.

23. (1) The Police may, in addition to the request for data under regulation 20, issue a conservation order in relation to the data.

(2) The conservation order shall be served on the service provider within the retention period applicable under regulation 22.

(3) Where a conservation order has been issued, the service provider shall conserve the data-

(a) either for a period of six months in addition to the original or extended applicable retention period which period shall not, without an order of a Magistrate or of a competent Court, exceed a total period of two years; or

(b) where criminal proceedings have been commenced within the applicable retention period or within such period as extended in accordance with paragraph (a), for such time as may be necessary for the conclusion of the criminal proceedings where the data is required to be produced as evidence; such conclusion shall be deemed to occur when the judgement in the proceedings becomes final and conclusive, whichever is the longer period.

Data security.

24. Data retained under this Part shall comply with the data security principles established under the Act and shall as a minimum -

(a) be of the same quality and subject to the same security and protection as the data on the network;

(b) be subject to appropriate technical and organisational measures to protect the data against accidental or unlawful destruction, accidental loss or alteration, or unlawful storage, processing, access or disclosure;

(c) be subject to appropriate technical and organisational measures to ensure that they can be accessed by specially authorised personnel only;

(d) except for such data as are the subject of a conservation order, be destroyed at the end of the applicable retention period.

Statistics.

25. (1) Service providers shall, in relation to the retention of data under this Part, provide on an annual basis, the following information to the Data Protection Commissioner -

(a) the cases in which information was provided under this Part;

(b) the time elapsed between the date on which the data were retained and the date on which the transmission of the data was requested;

(c) any cases where requests for data could not have been met.

(2) Any statistics provided under this regulation shall not contain any personal data."