

**SUBSIDIARY LEGISLATION 399.25**

**ELECTRONIC COMMUNICATIONS (PERSONAL  
DATA AND PROTECTION OF PRIVACY)  
REGULATIONS**

1st April, 2004

*LEGAL NOTICE 19 of 2003, as amended by Legal Notices 523 of 2004,  
425 of 2007 and 199 of 2008.*

1. The title of these regulations is the Electronic Communications (Personal Data and Protection of Privacy) Regulations.

Citation.  
*Amended by:*  
*L.N. 523 of 2004.*

2. (1) Unless otherwise stated in these regulations, the definitions in the Electronic Communications (Regulation) Act and the Data Protection Act shall apply.

Definitions.  
*Amended by:*  
*L.N. 523 of 2004.*  
Cap. 399.  
Cap. 440.

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

"Act" unless otherwise stated in these regulations, means the Electronic Communications (Regulation) Act;

Cap. 399.

"Authority" means the Malta Communications Authority;

"call" means a connection established by means of a publicly available telephone service allowing a two-way communication in real time;

"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 electronic communications service. This does not include any information conveyed as part of a broadcasting service to the public over a public communications network 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 Data Protection Act;

Cap. 440.

"emergency access numbers" means such numbers as are established in accordance with the Electronic Communications (Regulation) Act or any regulations made thereunder to ensure the access of all users to emergency services;

Cap. 399.

"location data" means any data processed in a public communications network, indicating the geographic position of the terminal equipment of a user of a publicly available electronic communications service;

"Minister" unless otherwise stated in these regulations means the Minister responsible for communications;

"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;

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

Application.  
Amended by:  
L.N. 523 of 2004.

**3.** (1) These regulations shall apply to the processing of personal data in connection with the provision of publicly available electronic communications services in public communications networks in Malta and any other country as the Minister may after consultation with the Minister responsible for data protection, designate by notice in the Gazette.

(2) Regulations 8, 9 and 10 shall apply to subscriber lines connected to digital exchanges, and where technically possible and if it does not require a disproportionate economic effort, to subscriber lines connected to analogue exchanges.

Security.  
Amended by:  
L.N. 523 of 2004.

**4.** (1) The undertaking which provides publicly available electronic communications services shall take appropriate technical and organisational measures to safeguard the security of the services it provides.

(2) If necessary, the measures required by subregulation (1) shall be taken in conjunction with the undertaking which provides a public communications network who shall comply with any reasonable requests made by the undertaking which provides publicly available electronic communications services for the purposes hereof.

(3) For the purposes of this regulation, measures shall only be taken to be appropriate if, having regard to -

- (a) the state of technological development; and
- (b) the cost of implementing the measures;

they are proportionate to the risks against which they would afford safeguards.

(4) Where, notwithstanding the taking of the measures required hereby, there is a significant risk of a breach of the security of the network, the undertaking which provides publicly available electronic communications services shall inform the subscribers concerned of -

- (a) that risk;
- (b) any remedies appropriate to afford safeguards against that risk which the subscribers themselves might take; and
- (c) the costs involved in relation to such remedies.

4A. It shall be the obligation of a service provider to ensure that it has in place the necessary technical and administrative capacity and all other requirements to enable it to comply with the provisions of regulations 19 and 21 of the Processing of Personal Data (Electronic Communications Sector) Regulations, for the purposes of granting access to data as established in regulation 20 of the said regulations and to retain such data for such periods as established by regulation 22(a) and (b) of the said regulations.

Data retention.  
*Added by:*  
*L.N. 199 of 2008.*

S.L. 440.01

5. The undertaking which provides publicly available electronic communications services shall inform subscribers and, if possible, users about the existence of any situations allowing the contents of communications to be unintentionally made known to persons who are not party to them.

Obligation to inform.  
*Amended by:*  
*L.N. 523 of 2004.*

6. If a subscriber requests a undertaking which provides publicly available electronic communications services to submit to him bills that are not itemised, that undertaking which provides publicly available electronic communications services shall comply with such a request.

Itemised billing.  
*Amended by:*  
*L.N. 523 of 2004.*

7. The Authority in exercising any function in respect of data protection in electronic communications shall have regard to the need to reconcile the rights of subscribers receiving itemised bills with the right of privacy of calling users and called subscribers.

Itemised billing and privacy.  
*Amended by:*  
*L.N. 523 of 2004.*

8. (1) Where presentation of calling-line identification is offered, the undertaking which provides publicly available electronic communications services shall ensure that the calling user shall have the possibility, using a simple means and free of charge, of preventing the presentation of the calling-line identification on a per call basis. The undertaking which provides publicly available electronic communications services shall ensure that the calling subscriber shall have this possibility on a per line basis.

Presentation and restriction of calling and connected line identification.  
*Amended by:*  
*L.N. 523 of 2004.*

(2) Where presentation of calling-line identification is offered, the undertaking which provides publicly available electronic communications services shall ensure that the called subscriber shall have the possibility, using a simple means and free of charge for reasonable use of this function, of preventing the presentation of the calling line identification of incoming calls.

(3) Where presentation of calling line identification is offered and where the calling line identification is presented prior to the call being established, the undertaking which provides publicly available electronic communications services shall ensure that the called subscriber shall have the possibility, using a simple means, of rejecting incoming calls where the presentation of the calling line identification has been prevented by the calling user or subscriber.

(4) Where presentation of connected line identification is offered, the undertaking which provides publicly available electronic communications services shall ensure that the called subscriber shall have the possibility, using a simple means and free of charge, of preventing the presentation of the connected line identification to the calling user.

(5) The provisions of subregulation (1) shall also apply with regard to calls to other countries, whereas the provisions of subregulations (2), (3) and (4) shall apply to incoming calls originating in other countries.

(6) Where the presentation of calling or connected line identification is available, the undertaking which provides publicly available electronic communications services or the undertaking which provides a public communications network shall inform subscribers and users of the existence of such services as well as of the possibilities referred in subregulations (1), (2), (3) and (4).

Exceptions.  
Amended by:  
L.N. 523 of 2004.

9. (1) An undertaking which provides a public communications network may override anything done to prevent the presentation of the identity of a calling line -

- (a) where a subscriber has requested the tracing of malicious or nuisance calls received on his line, and
- (b) such an undertaking is satisfied that such action is necessary and expedient for the purposes of tracing such calls:

Provided that the data containing the identification of the calling subscriber shall be stored and made available by the aforesaid undertaking to the competent authority in accordance with the relevant legislation:

Provided further that the aforesaid undertaking shall abide with any directive that the Authority may from time to time issue where the Authority considers that the aforesaid undertaking has not taken adequate measures in accordance with the requirements of this subregulation.

(2) The overriding of the elimination of the presentation of the calling line identification in accordance with subregulation (1) may only be provided for the duration of the period during which the malicious or nuisance calls take place.

(3) A request under this regulation shall be made in writing and shall include such information as may be necessary for the processing of the request. In cases of urgency a verbal request may be made provided a written request is sent within twenty-four hours of the request made verbally.

(4) A undertaking which provides publicly available electronic communications services shall override the elimination of the presentation of calling line identification and the temporary denial or absence of consent of a subscriber or user for the processing of location data, on a per-line basis for calls made to emergency access numbers for the purpose of responding to such calls.

Termination of  
unwanted  
automatic call  
forwarding.  
Amended by:  
L.N. 523 of 2004.

10. (1) Where calls originally directed to another line are being automatically forwarded to the line of a subscriber because of action taken by a third party and the subscriber requests the undertaking which provides publicly available electronic communications services to terminate such calls, that provider shall ensure, without charge, that such forwarding ceases without any

delay.

(2) Any other undertaking which provides publicly available electronic communications services shall comply with any reasonable requests made by the undertaking which provides publicly available electronic communications services of the subscriber for the purposes of this regulation.

**11.** The provisions of regulation 8(1) to (5) shall not apply when a law specifically provides for the provision of information as a necessary measure in the interest of:

Non-applicability of certain regulations.

- (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 article 46(2) of the Data Protection Act shall apply to an action under subregulation (1) of this regulation.

Cap. 440.

**13.** The Authority shall be responsible to ensure compliance with the provisions of these regulations.

Enforcement.

**14.** The Authority may, in accordance with the provisions of Part VII of the Malta Communications Authority Act, impose an administrative fine upon any person who fails to comply with any of the provisions of these regulations or with any directive that the Authority may issue in accordance with these regulations:

Administrative fines and sanctions.  
*Substituted by:*  
*L.N. 523 of 2004.*  
*Amended by:*  
*L.N. 425 of 2007.*  
Cap. 418.

Provided that any such fine that the Authority may decide to impose in accordance with this regulation, shall not exceed eleven thousand and six hundred and forty-five euro (11,645) for each breach, and two hundred and thirty euro (230) for each day during which such breach persists.

**15.** Any person aggrieved by a decision taken by the Authority in accordance with these regulations and having a legal interest to contest such a decision may appeal to the Communications Appeals Board established under the Malta Communications Authority Act.

Appeals from decisions of the Authority.  
*Amended by:*  
*L.N. 523 of 2004.*  
Cap. 418.

Advice.

**16.** The Authority may request the advice of and where appropriate shall consult with the Commissioner in the exercise of any of its functions under these regulations.

Request that the Authority exercises its enforcement functions.

**17.** Where it is alleged that any of these regulations have been contravened, the Commissioner or any aggrieved person may request the Authority to exercise its 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 Authority.

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