VERŻJONI ELETTRONIKA

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";

VERŻJONI ELETTRONIKA

(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

VERŻJONI ELETTRONIKA

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

VERŻJONI ELETTRONIKA

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

VERŻJONI ELETTRONIKA

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:

(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;

Cap. 378.

(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;";

VERŻJONI ELETTRONIKA

(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:

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

VERŻJONI ELETTRONIKA

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.

VERŻJONI ELETTRONIKA

(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).

VERŻJONI ELETTRONIKA

(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:

VERŻJONI ELETTRONIKA

(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

VERŻJONI ELETTRONIKA

(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

VERŻJONI ELETTRONIKA

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:

VERŻJONI ELETTRONIKA

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.

Cap. 399.

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.

VERŻJONI ELETTRONIKA

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.".

Amendment of article 13 of the principal Act.

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

"(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.".

Addition of new article to the principal Act.

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

"Communications 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.".

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

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

Amendment of article 23 of the principal Act.

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

(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

VERŻJONI ELETTRONIKA

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;

VERŻJONI ELETTRONIKA

(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

VERŻJONI ELETTRONIKA

(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:

VERŻJONI ELETTRONIKA

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.

VERŻJONI ELETTRONIKA

(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

VERŻJONI ELETTRONIKA

(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.

VERŻJONI ELETTRONIKA

(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.

VERŻJONI ELETTRONIKA

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

VERŻJONI ELETTRONIKA

(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

VERŻJONI ELETTRONIKA

(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.".

Amendment of article 25 of the principal Act.

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

VERŻJONI ELETTRONIKA

(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

VERŻJONI ELETTRONIKA

(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.

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

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.

Amendment of the First Schedule to the principal Act.

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

"(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.".

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

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

Addition of a new Schedule to the principal Act.

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

"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

VERŻJONI ELETTRONIKA

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

VERŻJONI ELETTRONIKA

communications by electronic mail.".

Consequential amendment of other enactments.

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.

SCHEDULE

Amendment of Laws

First Column Enactment		Second Column Extent of Amendments
Utilities and Services (Regulation of Certain Works) Act. Cap. 81	Article 2	1. In the Maltese text of article 2 thereof the definition " "regolatur kompetenti ta' infrastruttura" jew "regolaturi kompententi ta' infrastruttura" " shall be substituted by the following: " "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;".
	Article 4A	2. Article 4A thereof shall be amended as follows: (a) in the Maltese text of sub-article (2) thereof, for the words "li ssirlu talba bil-miktub minn regulatur 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 regulatur kompetenti ta' utilitajiet" and the words "jikkonsulta bil-miktub lir-regolatur jew regolaturi kompetenti ta' utilitajiet hekk kif jista' jkun il-każ:"; and

VERŻJONI ELETTRONIKA

(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 "Iżda 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 "Iżda 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 "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." there shall be substituted the words "għaldaqstant kull parti tista' tirreġistra tilwima mal-Bord għas-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 ħażin fuq il-provediment ta' servizzi ta' komunikazzjonijiet elettroniċi f'Malta." there shall be substituted the words "impatt ħażin fuq il-provdiment ta' servizzi u, jew *networks* ta' komunikazzjonijiet elettroniċi f'Malta.".

VERŻJONI ELETTRONIKA

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

VERŻJONI ELETTRONIKA

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta riċiklata — ***Printed at the Government Printing Press on recycled paper***

Prezz/*Price*
€2.88