CHAPTER 500

SERVICES (INTERNAL MARKET) ACT

To establish general provisions facilitating the exercise of freedom of establishment for service providers and the free movement of services in the internal market and to implement Directive 2006/123/EC.

29th December, 2009

ACT XXIII of 2009, as amended by Act XVI of 2018.

PART I - PRELIMINARY

Short title.

1. The short title of this Act is the Services (Internal Market) Act.

PART II - DEFINITIONS

Interpretation.

2. In this Act, unless the context otherwise requires:

"Appeals Board" means the appeals boards, tribunals or courts established by law, recourse to which may be made by any aggrieved person following a decision of a competent authority;

"authorisation" means a permit, licence, warrant, appointment, concession or any formal or implied decision concerning access to a service activity or the exercise thereof;

"authorisation scheme" means any authorisation and other procedure of an administrative nature, under which a provider or recipient is in effect required to take steps in order to commence the activity in question and obtain, from a competent authority, authorisation concerning access to a service activity or the exercise thereof;

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

(*a*) information enabling direct access to the activity of the undertaking, organisation or person, including in particular a domain name or an electronic-mailing address;

(*b*) communications relating to the goods, services or image of the undertaking, organisation or person, compiled in an independent manner, particularly when provided for no financial consideration;

"competent authority" means any body or authority established and, or designated by law and vested with a supervisory and, or regulatory role in relation to service activities, including the regulation of access to service activities and, or the exercise thereof;

"the Directive" means Directive 2006/123/EC of the European Parliament and of the Council of 12 December, 2006, on services in the internal market;

"establishment" means the actual pursuit of an economic activity as referred to in Article 43 of the Treaty, by a service provider for an indefinite period and through a stable infrastructure from where the business of providing services is actually carried out;

"the European Commission" means the Commission of the European Community;

"Internal Market Information System" means the information system, established further to Article 34 of the Directive, through which competent authorities exchange information in fulfilment of their obligations under Chapter VI of the Directive;

"Member State" means a member state of the European Economic Area;

"Member State of establishment" means the Member State in whose territory the provider of the service concerned is established;

"Member State where the service is provided" means the Member State where the service is supplied by a provider established in another Member State;

"the Minister" means the Minister responsible for the economy;

"overriding reasons relating to the public interest", unless otherwise specified in this Act, means the reasons recognised as such in the case law of the European Court of Justice, and as they may continue to evolve, including the following grounds: public policy, public security, public safety, and public health; the maintenance of order in society; social policy objectives, the protection of the recipients of services; consumer protection; the protection of workers including the social protection of workers; animal welfare; the preservation of the financial balance of the social security system; the prevention of fraud; the prevention of unfair competition; the protection of the environment and the urban environment including town and country planning; the protection of creditors; safeguarding the sound administration of justice; road safety; the protection of intellectual property; cultural policy objectives including safeguarding the freedom of expression of various elements in particular social, cultural, religious and philosophical values of society; the need to ensure a high level of education, the maintenance of press diversity and the promotion of the national language; the preservation of national historical and artistic heritage; and veterinary policy;

"point of single contact" means the electronic system through which the competent authorities shall fulfil their functions relating to the completion of all procedures and formalities necessary for establishment and access to and exercise of a service activity in Malta and the provision of relevant information to an applicant, a provider and recipients in terms of this Act or as may be prescribed;

"provider" means any natural person who is a national of a Member State, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who offers or provides a

service;

"recipient" means any natural person who is a national of a Member State or who benefits from rights conferred upon him by Community acts, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who, for professional or non-professional purposes, uses, or wishes to use, a service;

"regulated profession" means a professional activity or a group of professional activities as referred to in Article 3(1)(a) of Directive 2005/36/EC on the recognition of professional qualifications as transposed by the Recognition of Professional Qualifications Regulations; S.L. 451.03.

"requirement" means any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions, administrative practice, the rules of professional bodies, or the collective rules of professional associations or other professional organisations, adopted in the exercise of their legal autonomy;

"service" means any self-employed activity performed for an economic consideration as referred to in Article 50 of the Treaty;

"services of a general economic interest" means those services declared by the Minister as services of general economic interest in terms of article 30(3) of the Competition Act in conformity with Community law; Cap. 379.

"the Treaty" means the Treaty establishing the European Community.

PART III - SCOPE OF APPLICATION OF THIS ACT

Scope. *Amended by*: *XVI.2018. Fourth Schedule.*

3. (1) This Act shall apply to services supplied by a provider.

(2) Without prejudice to subarticle (1), this Act shall not apply to the following activities:

(*a*) financial services, such as banking, credit, insurance and re-insurance, occupational or personal pensions, securities, investment funds, payment and investment advice, including the services listed in Annex I to Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions as transposed by the European Passport Rights for Credit Institutions Regulations; S.L. 371.11

(*b*) electronic communications services and networks, and associated facilities and services, with respect to matters covered by Directives 2002/19/EC (Access Directive), 2002/20/ EC (Authorisation Directive), 2002/21/EC (Common Regulatory Framework), 2002/22/EC (Universal Services Directive) and 2002/58/EC (Directive on Piracy and Electronic Communication) as transposed into Maltese legislation;

(*c*) services in the field of transport, including port services, falling within the scope of Title V of the Treaty;

(*d*) services of temporary work agencies;

(*e*) healthcare services including pharmaceutical services

provided by health professionals to assess, maintain and restore the state of health to patients, whether or not they are provided via healthcare facilities, and regardless of the ways in which they are organised and financed at national level or whether they are public or private;

(*f*) audiovisual services, including cinematographic services, whatever their mode of production, distribution and transmission, and radio broadcasting;

Cap. 583.

(*g*) gambling activities as regulated by the Gaming Act;

(*h*) activities which are connected with the exercise of official authority as set out in Article 45 of the Treaty;

(*i*) social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities recognised as such by the State;

(*j*) private security services;

(*k*) services provided by notaries and court marshals, who are appointed by an official act of government;

(*l*) services in the field of taxation.

(3) If the provisions of this Act are in conflict with a provision of a Community act governing specific aspects of access to, or exercise of a service activity in, specific sectors or for specific professions, the provision of the Community act shall prevail and shall apply to those specific sectors or professions. These include:

(*a*) Directive 96/71/EC on the posting of workers in the framework of the provision of services;

(*b*) Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and self-employed persons, and to members of their families moving within the Community;

(*c*) Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities;

(*d*) Directive 2005/36/EC on the recognition of professional qualifications.

(4) Furthermore, this Act shall not apply to:

(*a*) rules of private international law, in particular rules governing the law applicable to contractual and non-contractual obligations; and

(*b*) rules concerning the rules of jurisdiction of the Courts.

PART IV - COMPETENT AUTHORITIES

General functions of competent authorities regulating access to service activities falling under this Act and, or the exercise thereof.

4. Further to the fulfilment of the powers, functions and responsibilities attributed to a competent authority, in the founding and enabling legislation concerning their area of competence, and without prejudice to the allocation of functions and powers vested among authorities within the national administrative system, a competent authority shall:

(*a*) simplify procedures and formalities applicable to the access to a service activity and to the exercise thereof;

(*b*) act objectively, transparently, efficiently and in a timely manner;

(*c*) provide information and assistance to providers and recipients subject to the provisions of this Act;

(*d*) make it possible to complete all procedures and formalities relating to access to a service activity and to the exercise thereof available electronically through the designated point of single contact:

Provided that the requirement to make it possible to complete all procedures and formalities electronically through the point of single contact shall not be applicable to the inspection of premises on which the service is provided or of equipment used by the provider or to the physical examination of the capability or of the personal integrity of the provider or of his responsible staff;

(*e*) assist competent authorities of another Member State and seek their assistance in fulfilling the supervisory obligations in terms of article 8;

(*f*) perform such other functions as may from time to time be assigned to it by the Minister, in consultation with other Ministers, as may be applicable.

Authorisation function and conditions.

5. (1) Where a competent authority grants and regulates access to a service activity, in the carrying out of its authorisation functions, on the basis of an authorisation scheme, the scheme shall be:

(*a*) non-discriminatory;

(*b*) necessary, and

(*c*) justified by an overriding reason relating to the public interest:

Provided that the public interest objective being pursued cannot be attained by means of a less restrictive measure, in particular because *a posteriori* inspections, checks and controls would take place too late to be genuinely effective.

Conditions for granting authorisations.

(2) The competent authority shall assess applications and grant authorisations based on criteria that are:

(*a*) non-discriminatory;

(*b*) justified by an overriding reason related to public

interest and proportionate to the attainment of that public interest objective;

(*c*) clear and unambiguous;

(*d*) objective;

(*e*) made public in advance; and

(*f*) transparent and accessible.

(3) A competent authority may not make access to or the exercise of a service activity in Malta subject to compliance to any of the following, in conformity with European Union law:

(*a*) discriminatory requirements based directly or indirectly on nationality or, in the case of companies, the location of the registered office, including in particular:

(i) nationality requirements for the provider, his staff, persons holding the share capital or members of the provider's management or supervisory bodies;

(ii) a requirement that the provider, his staff, persons holding the share capital or members of the provider's management or supervisory bodies be resident in Malta;

(*b*) a prohibition on having an establishment in more than one Member State or on being entered in the registers or enrolled with professional bodies or associations of more than one Member State;

(*c*) restrictions on the freedom of a provider to choose between a principal or a secondary establishment, in particular an obligation on the provider to have its principal establishment in Malta, or restrictions on the freedom to choose between establishment in the form of an agency, branch or subsidiary;

(*d*) conditions of reciprocity with the Member State in which the provider already has an establishment;

(*e*) the case-by-case application of an economic test making the granting of authorisation subject to proof of the existence of an economic need or market demand, an assessment of the potential or current economic effects of the activity or an assessment of the appropriateness of the activity in relation to the economic planning objectives set by the competent authority; this prohibition shall not concern planning requirements which do not pursue economic aims but serve overriding reasons relating to the public interest;

(*f*) the direct or indirect involvement of competing operators, including within consultative bodies, in the granting of authorisations or in the adoption of other decisions of the competent authorities, with the exception of professional bodies and associations or other organisations acting as the competent authority;

this prohibition shall not concern the consultation of organisations, such as chambers of commerce or social partners, on matters other than individual applications for authorisation, or a consultation of the public at large;

(*g*) an obligation to provide or participate in a financial guarantee or to take out insurance from a provider or body established in Malta; this paragraph is without prejudice to sub-article (5) or to requirements relating to the participation in a collective compensation fund for members of professional bodies or organisations;

(*h*) an obligation to have been pre-registered, for a given period, in the registers held in Malta or to have previously exercised the activity for a given period in Malta.

(4) Where a competent authority makes access to a service activity or the exercise thereof subject to any of the following non-discriminatory requirements:

(*a*) quantitative or territorial restrictions;

(*b*) an obligation on the provider to take a specific legal form;

(*c*) requirements which relate to the shareholding of a company;

(*d*) requirements, other than those concerning matters covered by Directive 2005/36/EC on the recognition of professional qualifications as transposed by the Recognition of Professional Qualifications Regulations, or provided for in other Community Instruments, which reserve access to the service activity in question to particular providers by virtue of the specific nature of the activity, S.L. 451.03.

it shall ensure that the requirements are:

(i) not directly nor indirectly discriminatory on the basis of the nationality of the individual or the registered office of the company;

(ii) justified by an overriding reason relating to the public interest; and

(iii) proportionate and suitable for attaining the objective pursued:

Provided that where the access to the service activity in question, or the exercise thereof, is a service of general economic interest, this sub-article shall apply only in so far as it does not obstruct the performance, in law or in fact, of the public service obligation task assigned to the provider or providers:

Provided further that with effect from 28 December 2009, the introduction of the said non-discriminatory requirements shall be notified to the European Commission through established procedure.

(5) Without prejudice to arrangements provided for in other

Community instruments concerning professional insurance or guarantees, a competent authority may request a provider established in Malta whose services present a direct and particular risk to the health and safety of the recipient or a third person, or to the financial security of the recipient, to subscribe to a professional liability insurance appropriate to the nature and extent of the risk, or provide a guarantee or similar arrangement which is equivalent or essentially comparable as regards it purpose.

For the purpose of this sub-article:

"direct and particular risk" means a risk arising directly from the provision of the service;

"health and safety" means, in relation to a recipient or a third person, the prevention of death or serious personal injury;

"financial security" means, in relation to a recipient, the prevention of substantial losses of money or of value of property;

"professional liability insurance" means insurance taken out by a provider in respect of potential liabilities to recipients and, where applicable, third parties arising out of the provision of the service.

A competent authority shall accept as sufficient evidence attestations of such insurance cover issued by credit institutions and insurers established in other Member States.

(6) A competent authority may not impose requirements on a service provider established in Malta which oblige him to exercise a specific service activity exclusively or which restricts him from exercising his service activity jointly or in partnership except in the case of:

(*a*) regulated professions, so long as it is justified on the grounds of ethics and conduct;

(*b*) providers of certification, accreditation, technical monitoring, test or trial services, so long as it is justified on the grounds of independence and impartiality:

Provided that where a competent authority authorises or permits the carrying out of multi-disciplinary activities between providers established in Malta, it shall ensure prevention of any conflict of interest from among the providers, the subsistence of independence and impartiality, and the adherence to professional ethics and codes conduct where applicable.

(7) A competent authority or any other professional body empowered at law to regulate the exercise of regulated professions, shall not prohibit commercial communications by the regulated professions:

Provided that professional rules on commercial communications shall be non-discriminatory, justified by an overriding reason relating to the public interest and proportionate:

Provided further that commercial communications by the regulated professions comply with professional rules, in conformity with Community law, which relate, in particular, to the

independence, dignity and integrity of the profession, as well as to professional secrecy, in a manner consistent with the specific nature of each profession.

Service provider established in another Member State.

(8) When a service provider is already established in another Member State, and seeks establishment in Malta:

(*a*) where the service activity is subject to an authorisation scheme or the fulfilment of other requirements regulating establishment in Malta, the competent authority shall not duplicate requirements or controls which are equivalent or essentially comparable as regards their purpose to which a provider may already be subject to in another Member State where he is established:

Provided that the provisions of this paragraph shall not apply to the documents referred to in Article 7(2) and 50 of Directive 2005/36/EC, in Articles 45(3), 46, 49 and 50 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, in Article 3(2) of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained, in the First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community and in the Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another Member State;

(*b*) where a competent authority requires a provider to supply a certificate, attestation or document proving that a requirement has been satisfied in terms of this Act:

(i) it shall accept any document from another Member State which serves an equivalent purpose or from which it is clear that the requirement in question has been satisfied;

(ii) it may not require a document from another Member State to be produced in its original form or as a certified copy or certified translation save in the cases provided for in any Community instrument or where such a requirement is justified by an overriding reason relating to the public interest, including public order and public

security:

Provided that this paragraph shall not affect the right of a competent authority from requesting a non-certified translation of documentation in the Maltese or English language:

Provided further that the competent authority may make use of the electronic system referred to in article 8 to carry out necessary verification, checks and controls with the relevant competent authority in the Member State of establishment;

(*c*) when a competent authority requires a provider to subscribe to a professional liability insurance in terms of sub-article (5), a competent authority may not require a provider to subscribe to a professional liability insurance or a guarantee where he is already covered by an insurance or guarantee which is equivalent or essentially comparable, as regards its purpose and the cover it provides in terms of the insured risk, the insured sum, or a ceiling for a guarantee and possible exclusions from the cover in another Member State in which the provider is already established. Where equivalence is only partial, a competent authority may require a supplementary insurance or guarantee to cover those aspects not already covered.

Selection from among several candidates.

(9) (*a*) Where the number of authorisations available for a given service activity is limited because of the scarcity of available natural resources, technical capacity or if justified by an overriding reason relating to public interest, a competent authority shall apply a selection procedure to potential candidates in order to ensure impartiality, transparency, conditions of open competition, including in particular adequate publicity about the launch, conduct and completion of the procedure.

(*b*) Subject to the provisions of paragraph (*a*) and sub-articles (1) and (2), in establishing the rules for the selection procedure, the competent authority may give consideration to issues relating to public health, social policy objectives, the health and safety of employees or self-employed persons, the protection of the environment, the preservation of cultural heritage and other overriding reasons relating to the public interest, in conformity with Community law.

Duration of authorisation.

(10) (*a*) An authorisation granted to a provider shall be for an indefinite period, except where:

(i) the authorisation is being automatically renewed or is subject only to the continued fulfilment of requirements;

(ii) the number of available authorisations is limited in terms of sub-article (9);

(iii) a limited authorisation period can be justified by an overriding reason relating to the public interest.

(*b*) In cases referred to in paragraph (*a*)(ii), an authorisation shall be granted for an appropriate limited period enabling the provider to recoup the cost of investment and to make a fair return on the capital invested, which authorisation may not be open to automatic renewal nor confer any other advantage on the provider whose authorisation has just expired or on any person having any particular links with that provider.

Territoriality.

(11) (*a*) An authorisation granted by a competent authority shall enable the provider to have access to the service activity or the exercise thereof throughout the national territory including by means of setting up agencies, subsidiaries, branches or offices, except where the authorisation for each individual establishment or a limitation of authorisation to a certain part of the territory is justified by an overriding reason relating to public interest.

(*b*) The service provider shall be required to inform the competent authority of the creation of subsidiaries, branches, offices or agencies whose activities fall within the scope of the authorisation scheme.

Procedures and formalities.

(12) In the fulfilment of its authorisation function, a competent authority shall:

(*a*) ensure that the procedures and formalities are maintained sufficiently simple, clear, objective and made public in advance, and shall not unduly complicate or delay the commencement of the service activity by the provider;

(*b*) acknowledge all applications requesting authorisation; specifying the time period within which the application shall be processed referred to in paragraph (*d*), the available means of redress and where applicable, a statement that in the absence of a response within the time-period specified the authorisation shall be deemed to have been granted;

(*c*) in the case of an incomplete application, inform the applicant as quickly as possible of the need to supply any additional information, together with the consequences which ensue should the applicant delay in providing the said information or requirements;

(*d*) process an application for an authorisation as quickly as possible and in any event within a time period which shall be fixed and made public in advance failing which it shall be deemed that the authorisation has been granted, the period will start to run from the day when all due information and requirements have been submitted and any other formalities have been

completed in order for the competent authority to process the application:

Provided that the time period may be extended once for a limited time when justified by the complexity of the issue, and due justification shall be given to the applicant before the original period has expired:

Provided further that a competent authority may make different arrangements where objectively justified by overriding reasons relating public interest;

(*e*) provide information regarding the means of redress available in case of non-acceptance of an application;

(*f*) grant authorisation as soon as the applicant fulfils all requirements, without prejudice to the right of the competent authority to revoke or modify an authorisation when the conditions for authorisation are no longer met by the provider;

(*g*) in the case of rejected applications due to failure to comply with the required procedures or formalities, inform the applicant of the rejection as soon as possible;

(*h*) except in the case of the granting of an authorisation, a decision from a competent authority, including refusal or withdrawal, shall be fully reasoned and shall be open to challenge before the Appeals Board.

Freedom to provide services by providers already established in Member States.

6. (1) With the exclusion of service activities and matters included under the First Schedule, a competent authority shall respect the right of a provider that is lawfully established and providing services in another Member State to provide services in Malta, and may not prevent him from providing such service activity by imposing requirements which are discriminatory, unnecessary or disproportionate.

For the purposes of this sub-article:

(*a*) a requirement is discriminatory if it necessitates the fulfilment of obligations which relate to the nationality of the applicant, including the place of establishment of a legal person;

(*b*) a requirement is unnecessary if it is not justified by reasons of public policy, public security, public health or the protection of the environment;

(*c*) a requirement lacks proportionality if it goes beyond what is necessary to pursue the objective.

(2) Without prejudice to sub-article (1), a competent authority may not subject a provider established in another Member State who wishes to provide services in Malta, to any of the following requirements:

(*a*) an obligation on the provider to have an establishment in Malta;

(*b*) an obligation on the provider to obtain an

authorisation from the competent authority including entry in a register or registration with a professional body or association in Malta except where provided for in this Act and other instruments of Community law;

(*c*) a ban on the provider setting up a certain form or type of infrastructure in Malta, including an office or chambers, which the provider needs in order to supply the services in question;

(*d*) the application of specific contractual arrangements between the provider and the recipient which prevent or restrict service provision by the self-employed;

(*e*) an obligation on the provider to possess an identity document issued by the relevant Maltese authorities for the exercise of a service activity;

(*f*) requirements which affect the use of equipment and material which are an integral part of the service provided, unless necessary for the purpose of health and safety at work;

(*g*) restriction on the freedom to provide services as contemplated under article 9(*b*) in relation to the right of recipients:

Provided that a competent authority may necessitate that the provider observes the relevant laws which regulate conditions of employment including those relating to collective agreements in conformity with Community law:

Provided further that in establishing whether a provider is exercising his freedom to provide services within the meaning of this article and Article 49 of the Treaty, or is an establishment case, the competent authority shall assess and decide each case on its individual merits and in conformity with the Community law and rulings of the European Court of Justice.

(3) In exceptional cases only, and on a case by case basis, without prejudice to sub-articles (1) and (2), a competent authority may, in respect of a provider established in another Member State, take measures in order to ensure the safety of services provided in Malta. When taking such measures, a competent authority shall follow the procedure established under the Fourth Schedule, and ensure the fulfilment of the following conditions:

(*a*) the national provisions in accordance with which the measures are taken have not been subject to Community harmonisation in the field of the safety of services;

(*b*) the measures taken provide for a higher level of protection of the recipient than would be the case in a measure taken by the Member State of establishment in accordance with its national provisions;

(*c*) the Member State of establishment has not taken any measures or has taken measures which are insufficient as compared with those requested by the competent

authority as referred to in paragraphs 2 and 3 to the Fourth Schedule;

(*d*) the measures are proportionate:

Provided that where the competent authority becomes aware of a serious specific act or circumstances relating to a service activity that would cause serious damage to the health and safety of persons, or the environment, in Malta or another Member State, it shall inform the Member State of establishment, other Member States that may be concerned or affected, and the European Commission within the shortest time possible through the Internal Market Information System.

Provision of information and assistance to applicants, providers and recipients.

7. In its function to provide information and assistance in terms of article 4(*c*):

(*a*) a competent authority shall cooperate with the designated entity in accordance with article 10(3) to ensure that the following are easily accessible to providers and recipients:

(i) the requirements applicable in other Member States relating to access to, and exercise of, the relevant service activities, in particular those relating to consumer protection;

(ii) the contact details of the competent authorities enabling the latter to be contacted directly, including the details of those authorities responsible for matters concerning the exercise of the relevant service activities;

(iii) the means of, and conditions for, accessing public registers and databases on providers and relevant services;

(iv) the means of redress which are generally available in the event of dispute between the competent authorities and the provider or the recipient, or between a provider and a recipient or between providers;

(v) the contact details of the associations or organisations other than the competent authorities, from which providers may obtain practical assistance;

(vi) a list, updated at least annually, of the names and commercial contact details of those providers who are in possession of a valid licence issued by the competent authority;

(*b*) at the provider's and recipient's request, the competent authority shall provide assistance consisting of simple, generic information of a non-legal nature, on the interpretation and application of the requirements, procedures and formalities needed for a provider or recipient to have access to the relevant service activity in Malta;

(*c*) in cooperation with the European Commission and

other Member States, the competent authority shall seek to assist recipients in Malta in obtaining information on the protection given to recipients, as well as the available means of redress, and the contact details of associations providing consumer assistance in other Member States.

Supervisory functions.

8. (1) A competent authority shall require providers established in Malta and falling under its area of competence to keep it updated at all times with the information it identifies as necessary and objectively justified for it to fulfil its supervisory function of services in terms of its enabling Act and this Act.

(2) The competent authority shall exercise its supervisory functions on providers established in Malta, and falling under its area of competence, whether the service is provided in Malta or in another Member State.

(3) In executing its supervisory functions, when a service is being provided in another Member State by a provider established in Malta, a competent authority shall assist the relevant competent authority of that other Member State according to the procedure set up in the Second Schedule. In doing so, the competent authority shall not refrain from taking supervisory enforcement measures in Malta on the grounds that a service has been provided or caused damage in another Member State:

Provided that a competent authority shall not be bound to carry out checks and controls in the Member State where the service is being provided.

(4) When a service is being provided in Malta, in the event of a temporary movement by a provider established in another Member State in terms of article 6:

(*a*) the competent authority shall participate in the supervision of the provider in accordance with the procedure set up in the Second Schedule;

(*b*) when it has imposed requirements in terms of the provisos to article 6(2), it shall assume responsibility for the supervision of the provider in Malta in order to ensure compliance with those requirements.

(5) A competent authority shall exchange requests and information with the relevant competent authorities of another Member State and the Commission through the Internal Market Information System.

(6) Without prejudice to the limitations imposed by any other law, a competent authority shall supply information to the relevant competent authority of another Member State on disciplinary or administrative actions, or criminal sanctions and decisions concerning insolvency or bankruptcy involving fraud, which directly concern a provider, in terms of the procedure contemplated under the Third Schedule.

PART V - RIGHTS OF RECIPIENTS

Prohibitions.

9. Recipients and potential recipients of a service shall not be subjected to discriminatory requirements, including:

(*a*) limitations to access to services in Malta through a provider's general conditions that contain discriminatory provisions relating to the nationality or place of residence of the recipient, provided that this does not preclude the possibility for a provider to provide for differences in the conditions of access where those differences are directly justified by objective criteria; or

(*b*) the granting of financial assistance by reason of the fact that the provider is established in another Member State or by reason of the location of the place at which the service is provided; or

(*c*) an obligation to obtain authorisation from, or to make a declaration to, a competent authority.

Right to information and assistance.

10. (1) Further to the right to information and assistance referred to in articles 4 and 7, a provider established in Malta is obliged to provide the information listed in the Fifth Schedule.

(2) For the purpose of subarticle (1), the body responsible for consumer protection shall be responsible to monitor and enforce compliance by the provider with the requirements listed under the Fifth Schedule.

(3) For the purposes of subarticle (1) the body responsible to provide, upon request, information in accordance with article 7(*a*)(i) to (vi) shall be the entity fulfilling the role of the European Consumer Centre in Malta or any other entity as may be designated by the Minister.

PART VI - MISCELLANEOUS

Power to take necessary measures.

11. It shall be the function of the Minister, in consultation with other Ministers, to take any additional necessary measures to this Act, in order to ensure Malta's fulfilment of its obligations under the Directive, and to ensure compliance by all concerned with the provisions of this Act.

Power of make regulations.

12. (1) The Minister may, in consultation with other Ministers, as the case may require, make regulations for the better carrying out of any of the provisions of this Act.

(2) Without prejudice to the generality of the aforesaid power, such regulations may in particular provide for:

(*a*) the definition of functions of a point of single contact, its administrative and operational set up and function including its coordination with the relevant competent authorities and other bodies established under other laws in fulfilment of the functions assigned to it;

(*b*) establishing the sanctions or penalties to which an offender under this Act may, on being found guilty, become liable;

(*c*) conformity by competent authorities with the provisions of this Act;

(*d*) the designation of a body responsible to communicate with the European Commission for the introduction of any laws, regulations or administrative provisions as referred to in the second proviso to article 5(4), and the procedure to be followed to channel the information to the European Commission;

(*e*) the designation of a national coordinator for the Internal Market Information System;

(*f*) the designation of an Appeals Board to take cognizance of complaints lodged by a provider against a competent authority in default of a procedure identified under its founding and enabling legislation;

(*g*) prescribing anything which may be required to be prescribed by this Act.

FIRST SCHEDULE

[Article 6(1)]

Services and matters excluded from the application of article 6(1)

(1) Services of general economic interest, *inter alia*:

(*a*) in the postal sector, services covered by Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service;

(*b*) in the electricity sector, services covered by Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity;

(*c*) in the gas sector, services covered by Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas;

(*d*) water distribution and supply services and waste water services;

(*e*) treatment of waste.

(2) Matters covered by Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 on the posting of workers in the framework of the provision of services.

(3) Matters covered by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

(4) Matters covered by Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services.

(5) The activity of judicial recovery of debts.

(6) Matters covered by Title II of Directive 2005/36/EC as transposed into Maltese law by virtue of the Recognition of Professional Qualifications Regulations, 2007, as well as requirements in the Member State where the service is provided which reserve an activity to a particular profession.

(7) Matters covered by Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons or self employed persons and to members of their families moving within the Community.

(8) As regards administrative formalities concerning the free movement of persons and their residence, matters covered by the provisions of Directive 2004/38/EC on the right of citizens of the European Union and their family members to move and reside freely within the territory of the member states with which beneficiaries must comply.

(9) As regards third country nationals who move to another Member State in the context of the provision of a service, the possibility for Member States to require visa or residence permits for third country nationals who are not covered by the mutual recognition regime provided for in Article 21 of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders or the possibility to oblige third country nationals to report to the competent authorities on or after their entry.

(10) As regards the shipment of waste, matters covered by Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community.

(11) Copyright, neighbouring rights and rights covered by Council Directive 87/54/EEC of 16 December 1986 as transposed into Maltese law by virtue of the Copyright Act, and regulations made thereunder, on the legal protection of topographies of semiconductor products and by Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, as well as industrial property rights.

(12) Acts requiring by law the involvement of a notary public.

(13) Matters covered by Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audit of annual accounts and consolidated accounts.

(14) The registration of vehicles leased in another Member State.

(15) Provisions regarding contractual and non-contractual obligations, including the form of contracts, determined pursuant to the rules of private international law.

SECOND SCHEDULE

[(Article 8(3) and (4)]

Cooperation with a competent authority of another Member State

(1) When a service is being provided in another Member State by a provider established in Malta, a competent authority shall cooperate with the relevant competent authority of another Member State, and fulfil its obligations as stipulated hereunder:

(*a*) when receiving a request from the relevant competent authority of another Member State, a competent authority shall confirm whether a provider is established in Malta and that to its knowledge the provider is not exercising his activity in an unlawful manner;

(*b*) the competent authority shall carry out such checks, inspections and investigations as requested and, or necessary, and shall inform the relevant competent authority in the other Member State of the results and, or of any measures taken by it:

Provided that a competent authority may decide on which measures are appropriate;

(*c*) in the event that a competent authority encounters difficulty in meeting a request for information or in carrying out checks, inspections or investigations, it shall rapidly inform the requesting competent authority with such difficulties in order to find a solution.

(2) Upon gaining actual knowledge of any conduct or specific acts by a provider established in Malta which provides services in other Member States, that, to its knowledge, could cause serious damage to the health and safety of persons or to the environment, the competent authority shall inform all other relevant competent authorities of other Member States and the Commission within the shortest possible period of time.

(3) When a service is being provided in Malta, in the event of a temporary movement by a provider established in another Member State:

(*a*) at the request of the relevant competent authority of the Member State of establishment, the competent authority shall carry out checks,

inspections and investigations necessary for ensuring the effective supervision by the competent authority of establishment:

Provided that a competent authority may decide on the most appropriate manner to meet the request by the Member State of establishment;

(*b*) the competent authority may, on its own initiative, conduct checks, inspections and investigations on the spot, provided that those checks, inspections and investigations are not discriminatory, motivated by the fact that the provider is established in another Member State and are proportionate;

(*c*) in the event that a competent authority encounters difficulty in meeting a request for information or in carrying out checks, inspections or investigations, it shall rapidly inform the requesting competent authority with such difficulties in order to find a solution;

(*d*) with respect to the requirements imposed by the competent authority in terms of article 6(3), the competent authority shall take all measures necessary to ensure that the provider complies with these requirements and shall carry out checks, inspections and controls necessary to supervise the service provided.

(4) Where a competent authority becomes aware of serious and specific acts or circumstances relating to a service activity that could cause serious damage to health and safety of persons or to the environment in Malta or in the territory of other Member States, the competent authority shall inform the relevant competent authority of the Member State of establishment, the other Member States concerned and the Commission within the shortest possible time.

THIRD SCHEDULE

[Article 8(6)]

Procedure to be followed on transmission of information on the good repute of a provider

(1) In complying with a request for information on the good repute of a provider, a competent authority shall abide by the provisions of disclosure of information provided under any other law.

(2) Without prejudice to paragraph (1), a competent authority upon receipt of a request by another competent authority shall supply any information on disciplinary or administrative decisions or on any other decision concerning a state of insolvency or bankruptcy which are directly relevant to the provider's competence or reliability.

(3) In the event that a request concerns the disclosure of information relating to sanctions and administrative decisions, a competent authority shall ensure that such sanctions and decisions are final.

(4) In the event that a request concerns the disclosure of information on any other enforceable decision, the competent authority shall clearly indicate whether the decision is final or subject to appeal. Should the latter be the case, the competent authority shall provide the expected time when the decision of appeal is expected to be delivered.

(5) In the event that a competent authority receives a request from a competent authority in another Member State relating to the disclosure of information on a

criminal sanction of a service provider which is directly relevant to the provider's competence or professional reliability, the competent authority shall refer such request to the Commissioner of Police and relay back the information received to the requesting competent authority:

Provided that a request made pursuant to the objectives mentioned in this sub-article must be duly substantiated, and the reason of the request is made known to the competent authority.

(6) The competent authority which supplies the information shall inform the service provider that that information has been disclosed.

FOURTH SCHEDULE

[(Article 6(3)]

Mutual assistance in the case of a case-by-case derogation

(1) Where a competent authority intends to take a measure pursuant to article 6(3) of this Act, the following procedure shall apply without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation.

(2) A competent authority shall request the competent authority in the Member State of establishment to take measures with regard to the provider, supplying all relevant information on the services and the circumstances of the case.

(3) The competent authority in the Member State of establishment shall, within the shortest time possible, check whether the provider is operating lawfully and verify the acts underlying the request.

(4) Following a reply from the competent authority in the Member State of establishment of the measures taken or envisaged to be taken or, as the case may be, the reason why it has not taken any measures, the competent authority shall notify the European Commission and the competent authority in the Member State of establishment of its intention to take measures, for the following reasons:

(*a*) why it believes the measures taken or envisaged by the competent authority in the Member State of establishment are inadequate;

(*b*) why it believes the measure it intends to take fulfils the following conditions:

(i) the national measure has not been subject to Community harmonisation in the camp of the safety of services;

(ii) the measure provides for a higher level of protection of the recipient than would be the case in a measure taken by the relevant competent authority in the Member State of establishment in accordance with its national provisions;

(iii) the relevant competent authority in the Member State of establishment has not taken any measures or has taken measures which are insufficient as compared with those referred in sub-paragraph (ii);

(iv) the measures are not proportionate.

(5) The measures may not be taken before fifteen working days from the date of notification as provided in paragraph (4).

(6) However the competent authority shall, in case of urgency, refrain from following the above procedure, and shall notify the measures taken, together with the reasons of urgency, within the shortest possible period of time to the Commission and the relevant competent authority in the Member State of establishment.

FIFTH SCHEDULE

[Article 10(1) and (2)]

Information to be provided to a recipient

(1) A provider established in Malta shall make the following information available to a recipient at all times:

(*a*) his name, legal status and form, the registered geographic address at which he is established and details enabling him to be contacted rapidly and communicated with directly and, as the case may be, by electronic means;

(*b*) where the provider is subject to a code of conduct, is a member of a trade association or professional body which provides recourse to settlement dispute proceedings other than judicial proceedings, the details of such body and the manner how the information on the characteristics and conditions relating to such proceedings may be obtained;

(*c*) where the provider is registered in a trade or other similar public register, the name of that register and the provider's registration number, or equivalent means of identification in that register;

(*d*) where the activity is subject to an authorisation scheme, the particulars of the relevant competent authority or the single point of contact;

(*e*) where the provider exercises an activity which is subject to VAT, the identification number referred to in Article 22(1) of Sixth Council Directive 77/388/EEC of 17 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;

(*f*) in the case of the regulated professions, any professional body or similar institution with which the provider is registered, the professional title and the Member State in which that title has been granted;

(*g*) the general conditions and clauses, if any, used by the provider;

(*h*) the existence of contractual clauses, if any, used by the provider concerning the law applicable to the contract and, or the competent courts;

(*i*) the existence of an after-sales guarantee, if any, not imposed by law;

(*j*) the price of the service, where a price is pre-determined by the provider for a given type of service;

(*k*) the main features of the service, if not already apparent from the context;

(*l*) where he is subject to an insurance cover or other guarantee, the contact details of the insurer or guarantor and the territorial coverage.

The information referred to in subparagraphs (*a*) to (*l*):

(i) shall be provided at the provider's initiative; and

(ii) shall be easily accessible to the recipient at the place where the service is provided or the contract concluded; or

(iii) can be easily accessed by the recipient electronically by means of an address supplied by the provider; or

(iv) appears on all documentation supplied to the recipient by the provider which sets out a detailed description of the service he provides.

(2) A provider shall make the following information available at the recipient's request:

(*a*) the price of the service and if an exact price cannot be quoted, the method for calculating the price or a detailed estimate;

(*b*) a reference to the professional rules applicable in the Member State of establishment and how to access them;

(*c*) information on their multi-disciplinary activities and partnerships which are directly linked to the service in question and on the measures taken to avoid conflicts of interest. Such information shall be included in any information document in which providers give a detailed description of their services;

(*d*) information, if any, on the provider's code of conduct, or membership of a trade association or professional body which provides for recourse to a non-judicial means of dispute settlement. The provider shall specify how to access detailed information on the characteristics of, and conditions for, the use of non-judicial means of dispute settlement.

(3) The provider shall ensure that the information supplied in accordance with paragraphs (1) and (2) is made available or communicated in a clear and unambiguous manner, and in good time, before the conclusion of the contract and, where there is no written contract, before the service is provided.