Verzjoni Elettronika

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 20,727, 29 ta' Ottubru, 2021
Taqsima B

A.L. 405 tal-2021

ATT BIEX JIRREGOLA KOMUNIKAZZJONIJIET ELETTRONIĊI (KAP. 399)

Regolamenti tal-2021 dwar Miżuri ta' Infurzar fir-rigward ta' Serivzzi tal-Intermedjazzjoni Online għall-Utenti Kummerċjali

BIS-SAĦĦA tas-setgħat mogħtija bl-artikolu 47 tal-Att biex jirregola Komunikazzjonijiet Elettroniċi, il-Ministru għall-Ekonomija u l-Industrija, wara konsultazzjoni mal-Awtorità ta' Malta dwar il-Komunikazzjoni, għamel dawn ir-regolamenti li ġejjin:-

Titolu u għan.

1. (1) It-titolu ta' dawn ir-regolamenti hu r-Regolamenti tal-2021 dwar Miżuri ta' Infurzar fir-rigward ta' Servizzi tal-Intermedjazzjoni Online għall-Utenti Kummerċjali.

(2) L-għan ta' dawn ir-regolamenti hu li jkun hemm fis-seħħ miżuri ta' infurzar biex ikun hemm konformità mar-Regolament 2019/1150 tal-Parlament Ewropew u tal-Kunsill tal-20 ta' Ġunju 2019 dwar il-promozzjoni tal-korrettezza u tat-trasparenza għall-utenti kummerċjali tas-servizzi tal-intermedjazzjoni online

Tifsir.

2. (1) F'dawn ir-regolamenti, kemm-il darba r-rabta tal-kliem ma teħtieġx xort'oħra:

"Att" ifisser l-Att biex jirregola Komunikazzjonijiet Elettroniċi; Kap. 399.

"Awtorità" tfisser l-Awtorità ta' Malta dwar il-Komunikazzjoni, jew kull awtorità oħra li tista' minn żmien għal żmien tiġi stabbilita taħt l-Att għat-Twaqqif ta' Awtorità ta' Malta dwar il-Komunikazzjoni; Kap. 418.

"Ministru" tfisser il-Ministru responsabbli għal komunikazzjoni;

"organizzazzjoni, assoċjazzjoni jew korp pubblika maħtur" tfisser organizzazzjoni, assoċjazzjoni jew entità pubblika li tista' minn żmien għal żmien tiġi maħtura skont ir-regolament 3;

"Qorti Ċivili" tfisser il-Qorti Ċivili (is-Sezzjoni tal-Kummerċ) stabbilita skont l-artikolu 3 tal-Ordni dwar it-Twaqqif ta' Sezzjonjiet tal-Qrati Ċivili; L.S. 12. 19.

"Regolament 2019/1150" tfisser ir-Regolament (UE) 2019/1150 tal-Parlament Ewropew u tal-Kunsill tal-20 ta' Ġunju 2019 dwar il-promozzjoni tal-korrettezza u tat-trasparenza għall-utenti kummerċjali

Verzjoni Elettronika

tas-servizzi tal-intermedjazzjoni online.

(2) It-tifsir kif mogħtija fl-Artkolu 2 tar-Regolament 2019/1150 għandhom japplikaw għal dawn ir-regolamenti.

Ħatra ta' organizzazzjonijiet, assoċjazzjonijiet jew korpi pubbliċi.

3. (1) Il-Ministru jista', wara konsultazzjoni mal-Awtorità, għall-finijiet tal-paragrafu 1 tal-Artikolu 14 tar-Regolament 2019/1150, jaħtar:

(a) dawk l-organizzazzzjonijiet jew assoċjazzjonijiet stabbiliti f'Malta li jissodisfaw mill-inqas ir-rekwiżiti tal-paragrafu 3 tal-Artikolu 14 tar-Regolament 2019/1150; u

(b) korpi pubbliċi stabbiliti f'Malta li jissodisfaw ir-rekwiżiti tal-paragrafu 4 tal-Artikolu 14 tar-Regolament 2019/1150.

(2) L-Awtorità għandha tikkomunika lill-Kummissjoni Ewropea l-isem u l-għan ta' kull organizzazzjoni, assoċjazzjoni jew korp pubbliku hekk maħtur.

Azzjoni minn utent kummerċjali.

4. Utent kummerċjali jista' japplika lil Qorti Ċivili biex jingħata rimedju fil-konfront ta' fornitur ta' servizzi tal-intermedjazzjoni online għal kull telf jew danni, ikun kif ikun deskritt, imġarrab minħabba nuqqas ta' konformità min-naħa ta' tali fornitur mad-dispożizzjonijiet tar-Regolament 2019/1150 li ġejjin:

(a) Artikolu 3 (termini u kundizzjonijiet);

(b) Artikolu 4 (restrizzjoni, sospensjoni u terminazzjoni); u, jew

(ċ) Artikolu 8 (termini kuntrattwali speċifiċi).

Azzjoni minn organizzazzjoni, assoċjazzjoni jew korp pubbliku maħtur.

5. (1) Organizzazzjoni, assoċjazzjoni jew korp pubbliku maħtur jista' jippreżenta rikors lil Qorti Ċivili għal ordni biex iwaqqaf jew jipprojbixxi xi nuqqas ta' konformità minn fornitur ta' servizzi tal-intermedjazzjoni online jew minn fornitur ta' magni tat-tiftix online, skont kif ikun il-każ, jekk iqis li kien hemm jew probabli li jkun hemm:

(a) ksur minn fornitur ta' servizzi tal-intermedjazzjoni online ta' xi obbligu biex jadderixxi ma' xi waħda mid-dispożizzjonijiet tar-Regolament 2019/1150 li ġejjin:

(i) Artikolu 3 (termini u kundizzjonijiet);

(ii) Artikolu 4 (restrizzjoni, sospensjoni u

Verzjoni Elettronika

terminazzjoni);

(iii) Artikolu 5 (ikklassifikar);

(iv) Artikolu 6 (prodotti u servizz anċillari);

(v) Artikolu 7 (trattament differenzjat);

(vi) Artikolu 8 (termini kuntrattwali speċifiċi);

(vii) Artikolu 9 (aċċess għad-data);

(viii) Artikolu 10 (restrizzjonijiet biex jiġu offruti kundizzjonijiet differenti b'mezzi oħra);

(ix) Artikolu 11 (sistema interna tat-trattament tal-ilmenti); u, jew

(x) Artikolu 12 (medjazzjoni).

(b) ksur min-naħa ta' fornitur ta' magni tat-tiftix online ta' obbligu biex jaderrixxi ma' xi waħda mid-dispożizzjonijiet tar-Regolament 2019/1150 li ġejjin:

(i) Artikolu 5 (ikklassifikar); u, jew

(ii) Artikolu 7 (trattament differenzjat).

Setgħat tal-Qorti Ċivili.

6. (1) Il-Qorti Ċivili meta tirċievi rikors skont ir-regolamenti 4 jew 5, għandha tordna n-notifika tar-rikors fir-rigward tal-persuna li fil-konfront tagħha jkun sar ir-rikors u li tkun allegatament qiegħda taġixxi bi ksur tar-Regolament 2019/1150, liema persuna għandha tkun intitolata li twieġeb fi żmien għoxrin (20) jum jew perjodu inqas li l-Qorti tqis li jkun adatt fiċ-ċirkostanzi, liema perjodu jibda mid-data tan-notifika fuq dik il-persuna.

(2) Il-Qorti Ċivili tista' meta tiddeċiedi kwalunkwe azzjoni li titressaq quddiemha skont dawn ir-regolamenti, tagħti kwalunkwe rimedju xieraq fuq it- termini li hi tista' tqis meħtieġa biex jiżguraw konformità mar-rekwiżiti tar-Regolamenti 2019/1150. Il-Qorti meta tagħmel dan għandha tqis l-interessi kollha involuti b'mod partikolari l-interess pubbliku.

(3) Il-Qorti Ċivili tista' meta tiddeċiedi kwalunkwe azzjoni li titressaq quddiemha skont dawn ir-regolamenti, teħtieġ ukoll li kwalunkwe fornitur ta' servizzi tal-intermedjazzjoni online jew fornitur ta' magni tat-tiftix online jippubblika f'dik il-forma u manjiera u sa fejn il-Qorti tqis xieraq bil-għan li jiġu eliminati

Verzjoni Elettronika

kwalunkwe effetti kontinwi ta' nuqqas ta' konformità:

(a) kopja tad-deċiżjoni tal-qorti; u, jew

(b) stqarrija korrettiva hekk kif tista' tiddetermina l-Qorti.

Kap. 12.

(4) Sakemm ma jingħadx mod ieħor f'dawn ir-regolamenti, id-dispożizzjonijiet tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili fir-rigward tas-smigħ u d-determinazzjoni ta' każijiet u ta' kwalunkwe appell minnhom għandhom japplikaw għal kull azzjoni li tista' issir skont dawn ir-regolamenti:

Iżda għandu jkun hemm dritt ta' appell minn deċiżjoni tal-Qorti Ċivili fuq punt ta' liġi lil Qorti tal-Appell (Superjuri).

Verzjoni Elettronika

L.N. 405 of 2021

ELECTRONIC COMMUNICATIONS (REGULATION) ACT (CAP. 399)

Online Intermediation Services for Business Users (Enforcement Measures) Regulations, 2021

IN EXERCISE of the powers conferred by article 47 of the Electronic Communications (Regulation) Act, the Minister for the Economy and Industry, after consultation with the Malta Communications Authority, has made the following regulations:-

Citation and scope.

1. (1) The title of these regulations is the Online Intermediation Services for Business Users (Enforcement Measures) Regulations, 2021.

(2) The scope of these regulations is to have in place enforcement measures in compliance with Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services.

Interpretation.

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

"Act" means the Electronic Communications (Regulation) Act; Cap. 399.

"Authority" means the Malta Communications Authority, or any other authority as may from time to time be established under the Malta Communications Authority Act; Cap. 418.

"Civil Court" means the Civil Court (Commercial Section) established by article 3 of the Civil Courts (Establishment of Sections) Order; S.L. 12. 19.

"designated organisation, association or public body" means an organisation, association or public body as may from time to time be designated in accordance with regulation 3;

"Minister" means the Minister responsible for communications;

"Regulation 2019/1150" means Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services.

Verzjoni Elettronika

(2) The definitions as assigned in Article 2 of Regulation 2019/1150 shall apply to these regulations.

Designation of organisations, associations or public bodies.

3. (1) The Minister may, after consultation with the Authority, for the purposes of paragraph 1 of Article 14 of Regulation 2019/1150, designate:

(a) such organisations or associations established in Malta that meet at least the requirements of paragraph 3 of Article 14 of Regulation 2019/1150, following a written request by any such organisation or association to be so designated to the Minister; and

(b) public bodies set up in Malta that meet the requirements of paragraph 4 of Article 14 of Regulation 2019/1150.

(2) The Authority shall communicate to the European Commission the name and purpose of any such designated organisation, association or public body.

Action by a business user.

4. A business user may apply to the Civil Court to seek redress against a provider of online intermediation services for any loss or damage, however so described, suffered consequential to non-compliance by such a provider with the following provisions of Regulation 2019/1150:

(a) Article 3 (terms and conditions);

(b) Article 4 (restriction, suspension and termination); and, or

(c) Article 8 (specific contractual terms).

Action by a designated organisation, association or public body.

5. (1) A designated organisation, association or public body may apply to the Civil Court for an order to stop or prohibit non-compliance by a provider of online intermediation services or by a provider of online search engines, as the case may be, if it considers that there has been or that there is likely to be:

(a) a breach by a provider of online intermediation services of an obligation to comply with any of the following provisions of Regulation 2019/1150:

(i) Article 3 (terms and conditions);

(ii) Article 4 (restriction, suspension and termination);

Verzjoni Elettronika

(iii) Article 5 (ranking);

(iv) Article 6 (ancillary goods and services);

(v) Article 7 (differentiated treatment);

(vi) Article 8 (specific contractual terms);

(vii) Article 9 (access to data);

(viii) Article 10 (restrictions to offer different conditions through other means);

(ix) Article 11 (internal complaint-handling system); and, or

(x) Article 12 (mediation);

(b) a breach by a provider of an online search engine of an obligation to comply with any of the following provisions of Regulation 2019/1150:

(i) Article 5 (ranking); and, or

(ii) Article 7 (differentiated treatment).

Powers of the Civil Court.

6. (1) The Civil Court on receipt of an application under regulations 4 or 5, shall order the notification of the application onto the person against whom the application is filed and who is allegedly acting in breach of Regulation 2019/1150, which person shall be entitled to reply within twenty (20) days or such lesser period as the Court may consider appropriate in the circumstances, which period shall commence as from the date of notification upon that person.

(2) The Civil Court may in determining any action brought before it in accordance with these regulations, grant any appropriate remedy on such terms as it may consider necessary to secure compliance with the requirements of Regulation 2019/1150. In doing so the Court shall have regard to all the interests involved in particular the public interest.

(3) The Civil Court may in determining any action brought before it in accordance with these regulations, also require that any provider of online intermediation services or provider of an online search engine publishes in such form and manner and to such extent as the Court considers appropriate for the purpose of eliminating any continuing effects of non-compliance:

Verzjoni Elettronika

(a) a copy of the court decision; and, or

(b) a corrective statement as may be determined by the Court.

(4) Unless provided otherwise in these regulations, the provisions of the Code of Organization and Civil Procedure for the hearing and determination of cases and of any appeal therefrom shall apply in relation to any actions brought under these regulations:

Cap. 12.

Provided that there shall be a right of appeal from a decision of the Civil Court on a point of law to the Court of Appeal (Superior).

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*
€0.36