

SUBSIDIARY LEGISLATION 426.02**ELECTRONIC COMMERCE (GENERAL)
REGULATIONS**

24th October, 2006

LEGAL NOTICE 251 of 2006, as amended by Legal Notices 426 of 2007 and 180 of 2012.

- 1.** The title of these regulations is the Electronic Commerce (General) Regulations. Title.
- 2.** (1) Unless otherwise stated in these regulations, the definitions in the Electronic Commerce Act shall apply. Definitions.
Amended by:
L.N. 180 of 2012.
Cap. 426.
- (2) In these regulations, unless the context otherwise requires:
- "the Act" means the Electronic Commerce Act and includes any regulations made thereunder; Cap. 426.
- "the Authority" means the Malta Communications Authority established under the Malta Communications Authority Act; Cap. 418.
- "commercial communication" means any form of communication designed to promote, directly or indirectly, the goods, services or image of a 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 person, in particular a domain name or an electronic mail address, or
- (b) communications relating to the goods, services or image of the person compiled in an independent manner, particularly when this is without financial consideration;
- "the Commission" means the Commission of the European Community;
- "the Community" means the European Community;
- "Community acts" means an act adopted by an institution of the Community;
- "consumer" includes any person who makes use of any services regulated by the Act and, or by these regulations, and for the purposes of regulation 14 includes a recipient;
- "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;

"court" means any court of law or adjudicative tribunal, however so described, set up by law;

"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;

"Electronic Signatures Directive" means Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures;

"electronic signature product" means hardware or software, or relevant components thereof, which are intended to be used by a signature certification service provider for the provision of electronic signature services or are intended to be used for the creation or verification of electronic signatures;

"enforcement action" means any form of enforcement action, however so described, including the imposition of any sanctions, that an enforcement authority, including the Authority, is empowered to take at law;

"enforcement authority" means any person who under any law is authorised to take enforcement action, but does not include a court;

"the European Council" means the Council of the European Community;

"intra-Community infringement" means:

- (i) an act or omission contrary to the Act or to these regulations 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
- (ii) an act or omission contrary to the Act or to these regulations by a seller or supplier who is established 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
- (iii) an act or omission contrary to the Act or to these regulations 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;

"Member State" means a Member State of the European Community;

"person" includes any body corporate or any body of persons whether or not it has a legal personality distinct from that of its members;

"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 Authority 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 Authority shall consult with the Consumer Affairs Council as established under the Consumer Affairs Act; Cap. 378.
- (b) in the context of regulations 3, 4 and 5, any enforcement authority to whom those regulations apply;
- (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 Directive on Electronic Commerce in other Member States in which such bodies exist;
- (d) voluntary organizations in other Member States whose purpose is to protect the interests referred to in paragraph (b) of this definition in accordance with the criteria laid down by their national law;
- (e) one or more organizations recognized by the Authority as collectively representing information society service providers; or
- (f) any qualified entity from a Member State included in the list of qualified entities;

"regulated profession" means any profession within the meaning of:

- (a) either article 1(d) of European Council Directive 89/48/EEC of the 21st 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,
- (b) or article 1(f) of European Council Directive 92/51/EEC of the 18th June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC;

"service provider" means any person established in Malta providing an information society service, and for the purposes of

regulations 9 and 14, includes any services provided by a signature certification service provider;

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

Internal market.

3. (1) Subject to subregulation (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 subregulation (4), an enforcement authority with responsibility in relation to any requirement in subregulation (1), shall ensure that the provision of an information society 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 subregulations (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 its application would restrict the freedom to provide information society services to a person in Malta from that Member State.

(4) Subregulations (1), (2) and (3) shall not apply to those fields set out in the Schedule.

(5) The reference to any requirements the application of which would restrict the freedom to provide information society services from another Member State in subregulation (3) does not include any requirement maintaining the level of protection for public health and consumer interests established by Community acts.

Derogations from regulation 3.

4. (1) Notwithstanding regulation 3(3), an enforcement authority may take measures, including applying any requirement which would otherwise not apply by virtue of regulation 3(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 regulation 3(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 regulation 3(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 subregulation (1).

(3) Subregulations (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 subregulation (1)(a) to (d).

(4) Subject to subregulations (5) and (6), an enforcement authority shall not take the measures in subregulation (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 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 subregulation (4) affects the commencement of any legal proceedings or the investigation of any offence, 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 subregulation (1) without first applying the requirements of subregulation (4).

(7) In a case where a measure is taken pursuant to subregulation (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 the reasons for urgency.

5. (1) Without prejudice to the information requirements under the First Schedule to the Act, a service provider shall make available to the recipient of the service and where appropriate or requested, to the competent enforcement authority and, or to the Authority, in a form and manner which is easily, directly and permanently accessible, the following information:

- (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 allows 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

General information to be provided.

- scheme, the particulars of the relevant supervisory public 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
- (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, these 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.

6. 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
- (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

Cap. 440.

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.

7. (1) This regulation establishes and regulates the right under these regulations to make a commercial communication which is part of, or constitutes, a service provided by a member of a regulated profession. Regulated professions.

(2) Without prejudice to any other provision of these regulations permitting a restriction or limitation of the right to which this regulation 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 regulation applies, subject to compliance with specified conditions as referred to in subregulation (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.

8. Subject to the provisions of regulation 9, the provision of information society services by a service provider shall not be subject to any prior authorization: No requirement for prior authorisation.

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.

9. (1) For the purposes of this regulation only, "services" means signature certification services and any such information society services to which the provisions of this regulation may apply, consequential to any designation that the Authority may make in accordance with subregulation (2). Notification requirement.

(2) Before providing services a service provider shall complete and file a notice with the Authority which shall be made in such form and include any such information as the Authority may require:

Provided that such information shall be limited to what is necessary for the Authority to identify the service provider and the services he provides:

Provided further that the Authority may, with the prior approval of the Minister, designate such other categories of service

providers to complete and file a notice in accordance with this regulation as the Authority may from time to time consider necessary.

(3) The service provider shall notify the Authority 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:

Provided that service providers already providing a service at the time of the coming into force of this regulation, shall file a notice with the Authority within ninety days of the coming into force of this regulation.

(4) The Authority shall establish and maintain a register of those service providers that have notified the Authority in accordance with this regulation. Such Register shall be accessible to the public and shall contain such information as the Authority considers appropriate.

Electronic signature products standards.

10. (1) Electronic signature products which meet the standards published by the European Commission in the Official Journal of the European Commission, in accordance with the procedure laid down in Article 9 of the Electronic Signatures Directive shall be presumed to be in compliance with the requirements laid down in paragraph (f) of the Third Schedule and of the Fourth Schedule, as applicable, of the Act.

(2) The use of electronic signature products originating from outside Malta and which comply with Electronic Signatures Directive shall not be subject to any restrictions.

Recognition of certificates.

11. (1) Certificates which are issued as qualified certificates to the public by a signature certification service provider established in a third country shall be recognised as legally equivalent to certificates issued by a signature certification service provider established within the Community if:

- (a) the signature certification service provider fulfils the requirements laid down in the Electronic Signatures Directive and has been accredited under a voluntary accreditation scheme established in a Member State; or
- (b) a signature certification service provider established within the Community who fulfils the requirements laid down in the Electronic Signatures Directive, guarantees the certificate; or
- (c) the certificate or the signature certification service provider is recognised under a bilateral or multilateral agreement between the Community and third countries or international organisations.

(2) Measures taken in accordance with subregulation (1) shall be without prejudice to any obligations undertaken by Malta under relevant international agreements.

12. During the signature verification process, the signature certification service provider shall ensure with reasonable certainty, that:

Signature verification.

- (a) the data used for verifying the signature correspond to the data displayed to the verifier;
- (b) the signature is reliably verified and the result of that verification is correctly displayed;
- (c) the verifier can, as necessary, reliably establish the contents of the signed data;
- (d) the authenticity and validity of the certificate required at the time of signature verification are reliably verified;
- (e) the result of verification and the identity of the signatory are correctly displayed;
- (f) the use of a pseudonym is clearly indicated; and
- (g) any security-relevant changes can be detected.

13. The Authority may, in order to ensure compliance with the provisions of the Act, from time to time issue technical guidelines as it may consider appropriate and require a signature certification service provider to submit to the Authority a statement concerning compliance with the Second and, or Third Schedules of the Act and any technical guidelines as the case may be, which statement shall be verified by auditors independent of the service provider, and the expense of such auditors shall be paid by the service provider:

Compliance audit.

Provided that any such auditors shall first be approved by the Authority:

Provided further that such an audit may only be required of a service provider at intervals of not less than one year, or if the Authority considers that there has been a material change in operations of the service provider or as part of an investigation conducted by the Authority in accordance with its powers at law.

14. (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 such provisions of these regulations as are enforced by the Authority, any party to such a dispute may refer the dispute to the Authority:

Disputes between a service provider and a consumer.

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 Authority believes should be investigated, the Authority shall notify all the parties to the dispute that the matter is being investigated. In doing so the Authority 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 Authority may decide not to initiate an investigation in accordance with this regulation 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 Authority in resolving any disputes referred to it under this regulation, may issue directives to the service provider requiring that service provider to comply with any measure the Authority 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.

(4) The Authority 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 regulation.

(5) The provisions of this regulation 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 regulation, the Authority 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 Authority shall publish notice of a decision given under this regulation and shall indicate where copies of, or information regarding the decision, may be obtained.

Issue of a
compliance order.
Amended by:
L.N. 180 of 2012.

15. (1) Where the Authority 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 the provisions of these regulations are complied with;
- (b) requiring any person to cease and desist from committing a breach of the Act and, or of these regulations.

(2) The Authority shall when issuing a compliance order under this regulation:

- (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
- (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 or tribunal restraining or restricting the Authority from issuing a compliance order under these regulations.

16. (1) Where a qualified entity wishes to seek a compliance order, it shall submit a written application to the Authority, whereby it must satisfy the Authority 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:

Application for compliance orders by qualified entities.

Provided that the Authority shall only consider a written application if the qualified entity shows to the satisfaction of the Authority that the cessation of the infringement was not achieved within two weeks after the request for consultation was received.

(2) Where the qualified entity is from another Member State, the Authority 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.

(3) The Authority 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 inter-community infringements.

(4) Before proceeding with the issue of a compliance order under regulation 15, the Authority 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, these regulations or any other law dealing with consumer protection.

17. (1) It shall be at the discretion of the Authority whether or not to issue a compliance order after a written request by a qualified entity has been made to it in terms of regulation 15 of these regulations.

Discretion of the Authority to issue a compliance order.
Amended by:
L.N. 180 of 2012.

(2) If the Authority decides not to issue a compliance order after an application has been made to it by a qualified entity, the Authority 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 fifteen days from when it notifies the Authority in writing with a request for the issue of a compliance order, apply to the Tribunal requesting the Tribunal to order the Authority to issue a compliance order under regulation 15. The person against whom the order is requested and the Authority 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.

Compliance order to take immediate effect.

18. A compliance order issued by the Authority shall come into force with immediate effect.

Appeal from a compliance order.
Amended by:
L.N. 180 of 2012.

19. (1) A person against whom a compliance order has been made, may, within fifteen 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 Authority 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 fifteen 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 regulation, 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 stayed pending the outcome of the appeal, subject to such conditions and amendments to the order as the Tribunal may determine.

Cap. 418.

(4) Subject to the provisions of this regulation, the provisions of Part VIII of the Malta Communications Authority Act and of any regulations made thereunder shall govern any appeals to the Tribunal.

Cases to be heard and determined with urgency.
Amended by:
L.N. 180 of 2012.

20. Appeals instituted under regulations 17 and 19 shall be heard and determined by the Tribunal with urgency and as expeditiously as possible:

Provided that the Tribunal at the request of any of the parties to the proceedings before it, may abridge any time limits established under these regulations in relation to the conduct of the appeal before it.

No need to prove actual loss, etc.

21. The Authority when issuing a compliance order under these regulations, shall not be required to prove:

- (a) actual loss or damage; or
- (b) actual recklessness, negligence or fault on the part of the service provider or person against whom the order is made.

22. Without prejudice to the powers of the Authority and other enforcement authorities under these regulations or under any other law, the Authority may, in accordance with its powers under Part VII of the Malta Communications Authority Act, take any such enforcement action as it may consider appropriate to ensure compliance with the provisions of the Act and of regulations 5, 6, 8, 11 and 15 of these regulations and, or to cease and desist from any intra-Community infringement and, or from any infringement of the Act and, or of these regulations, and in particular may impose an administrative fine on any person who fails to comply accordingly:

Enforcement by the Authority.
Amended by:
L.N. 426 of 2007.
Cap. 418.

Provided that any such fine that the Authority may decide to impose in accordance with this regulation, shall not exceed twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (€23,293.73) for each breach, and, or four hundred and sixty-five euro and eighty-seven cents (€465.87) for each day during which such breach persists:

Provided further that in taking any measure in accordance with this regulation, the Authority may, where it considers appropriate, give any such publicity as to any such measure as it may consider appropriate in the circumstances.

23. (1) Without prejudice to any other powers it has at law, the Authority may, in writing, order any person to cease and desist from committing any intra-Community infringement and, or from acting in breach of any of the provisions of the Act, and, or of these regulations.

Issue of undertakings.
Amended by:
L.N. 426 of 2007.

(2) The Authority may, in issuing an order under subregulation (1), require the person concerned to provide the Authority 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 Authority may consider necessary in the circumstances.

(3) A person who makes a undertaking in accordance with this regulation 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 Authority not exceeding the sum of twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (€23,293.73) and, or four hundred and sixty-five euro and eighty-seven cents (€465.87) for each day during the failure to comply with the undertaking persists.

24. (1) The Authority may, for the better information of the public, require the service provider or person against whom the compliance order has been issued, at their expense to communicate in any manner the Authority considers appropriate, including publication in at least two daily newspapers:

Authority may require publication.

(a) a copy in full or in part -

- (i) of a compliance order made under regulation 15 and, or
- (ii) a copy of an undertaking given under regulation 23,

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 these regulations.

(2) Any communications required in terms of subregulation (1) must be made within seven days from receipt of a notice issued by the Authority requiring the service provider or person concerned to make any such communications. Where the said communications are not effected as aforesaid, the Authority may proceed to issue the communications itself and any expenses incurred by the Authority in issuing any communications made by it in accordance with the provisions of this regulation, shall be recoverable as a civil debt from the service provider or person against whom the compliance order was issued.

Right of appeal.
Amended by:
L.N. 180 of 2012.

25. Any person aggrieved by a decision however so described taken by the Authority in accordance with these regulations 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 these regulations, the procedures as stated in regulations 17 and 19 shall apply.

Consultation with
and by other
enforcement
authorities.

26. (1) The Authority may request the advice of and where appropriate shall consult with any other enforcement authority in the exercise of any of its functions under these regulations.

(2) In acting in accordance with any of the provisions of these regulations, an enforcement authority shall, in all instances, first consult and act in co-ordination with the Authority.

Non-applicability
of certain
regulations to the
activities or areas
listed in the Fifth
Schedule of the
Act.

27. Regulations 3, 4, 5, 6, 7 and 8 shall not apply to the activities or areas listed in the paragraphs (a), (b), (c) and (d) of the Fifth Schedule to the Act.

SCHEDULE

Regulation 3(4)

1. To the extent that the following national laws implement the Directives referred to in the Annex to the Electronic Commerce Directive namely:
 - (i) 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;
 - (ii) 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;
 - (iii) Undertakings for Collective Investment in Transferable Securities and Management Companies Regulations, 2004 (Legal Notice 207 of 2004 - S.L. 370.11);
 - (iv) European Passport Rights for Insurance Undertakings Regulations, 2004 (Legal Notice 89 of 2004 - 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 communications by electronic mail.
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