

MALTA

Notes on Recent Legal Developments – PAUL EDGAR MICALLEF

Data Protection in the Telecommunications Sector.

Four legal notices were enacted in January 2003 to regulate different aspects relating to the privacy and the processing of personal data in connection with the provision of publicly available telecommunications services.

Legal Notice 16 of 2003 entitled the “Processing of Personal Data (Telecommunications Sector) Regulations, 2003” was enacted by the Minister responsible for data protection after consultation with the Data Protection Commissioner in accordance with the powers granted to the Minister under the Data Protection Act.

Matters dealt with under this legal notice include:

- The prohibition of listening, tapping, storing or undertaking any form of interception or surveillance of data traffic without the consent of the user. This rule does not apply to those instances where any such recording is lawfully authorised;
- The conditions relating to access to information stored in terminal equipment, including the rights of the subscriber or user to object to the processing of such data;
- The purposes as to when traffic data may be processed, until this can be done and when such data must be erased or made anonymous;
- When location data other than traffic data can be processed, to what extent and for how long, and the obligations of the service provider when doing so vis-à-vis the users or subscribers concerned;
- The obligations of any person who produces a directory of subscribers particularly to subscribers;
- The prohibition of unsolicited communications for the purpose of direct marketing using an automatic calling machine, a fax machine or electronic mail.

Any person who contravenes these regulations is liable to the imposition of a fine by the Data Protection Commissioner of not more than 1000 Maltese Liri (circa 2400 Euro). Any person who feels aggrieved by a decision of the Commissioner may appeal to the Data Protection Appeals Tribunal.

Legal Notices 17 and 18 of 2003 amend existing regulations on respectively Cable Systems and Telecommunication Services. The purpose of these amendments is to ensure that existing provisions on data protection in other laws are in conformity with the new norms under Legal Notices 16 and 19 of 2003.

Legal Notice 19 of 2003 entitled the “Telecommunications (Data Protection and Protection of Privacy) Regulations, 2003” were enacted by the Minister responsible for

telecommunications after consultation with the Malta Communications Authority in accordance with the powers granted to the Minister under the Telecommunications (Regulation) Act.

Matters dealt with under L.N. 19 of 2003 include:

- The obligation of the service provider to take appropriate technical and organisational measures to safeguard the security of the services provided
- The obligation of the service provider to inform subscribers, and if possible users about any situations that allow the contents of communications to be unintentionally made known to persons who are not party to them;
- The right of the subscriber to ask that he is not provided with an itemised bill;
- The presentation and restriction of calling and connected line identification;
- The remedies available to a subscriber receiving malicious or nuisance calls including the right to request that the service provide overrides the elimination of the calling line identification on a temporary basis;
- The termination of unwanted automatic call forwarding

The Authority is empowered to impose a fine, including fines for each day of non-compliance, upon an authorised telecommunications provider who contravenes these regulations. Any person who feels aggrieved by any decision taken by the Authority under these Regulations can appeal to the Telecommunications Appeals Board.

Both L.N. 16 and L.N. 19 entitle a person who suffers loss or damage because of the breach of a provision of the relevant regulations to seek compensation. Under both legal notices the Data Protection Commissioner and the Malta Communications Authority may seek advice and consult with each other in the exercise of their respective functions under these regulations.