

## CHAPTER 399

### ELECTRONIC COMMUNICATIONS (REGULATION) ACT

*To regulate Electronic Communications.*

*Substituted by:  
VII. 2004.11.*

31st December, 1997  
2nd January, 1998

*ACT XXXIII of 1997, as amended by Acts XIX of 1998, XVIII of 2000, VI of 2001, XXVII of 2002, IX of 2003 and VII of 2004; Legal Notice 425 of 2007; Acts XXX of 2007, XII of 2010, IX of 2011 and V of 2012; Legal Notice 180 of 2012; and Acts VIII of 2014, XVIII of 2016, XI of 2018 and LII of 2021.*

#### PART I

##### PRELIMINARY

1. The short title of this Act is the Electronic Communications (Regulation) Act.

*Short title.  
Amended by:  
VII. 2004.11.*

2. In this Act, and in regulations made thereunder, unless the context otherwise requires -

*Interpretation.  
Amended by:  
XIX. 1998.3;  
XVIII. 2000.31;  
VII. 2004.12;  
IX. 2011.3;  
L.N. 180 of 2012;  
Amended by:  
LII. 2021.14.*

"access" means the making available of facilities and, or services, to another undertaking, under defined conditions, on either an exclusive or a non-exclusive basis, for the purpose of providing electronic communications services including when they are used for the delivery of information society services or broadcast content services. It covers, *inter alia*, access to:

- (a) network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop);
- (b) physical infrastructure including buildings, ducts and masts;
- (c) relevant software systems including operational support systems;
- (d) information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing;
- (e) number translation or systems offering equivalent functionality;
- (f) fixed and mobile networks, in particular for roaming; and
- (g) conditional access systems for digital television services and access to virtual network services;

"this Act" means the Electronic Communications (Regulation) Act, and includes any regulations made thereunder unless the context otherwise requires;

"apparatus" means any equipment or machinery however so described;

"associated facilities" means those associated services, physical infrastructures and other facilities or elements associated with an electronic communications network and, or an electronic communications service which enable and, or support the provision of services through that network and, or service or have the potential to do so, and include *inter alia* buildings or entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes, and cabinets;

"associated services" means a service associated with an electronic communications network and, or an electronic communications service which enables and, or supports the provision, self-provision or automated-provision of services through that network and, or service, or has the potential to do so and includes number translation or systems offering equivalent functionality, conditional access systems and electronic programme guides (EPGs), as well as other services such as identity, location and presence service;

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"the Authority" means the Malta Communications Authority established under the [Malta Communications Authority Act](#);

"BEREC" means the Body of European Regulators for Electronic Communications established by [Regulation \(EU\) 2018/1971](#) of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office);

"cable television networks" means any mainly wire-based infrastructure established primarily for the delivery or distribution of radio or television broadcast to the public;

"conditional access system" means any technical measure, authentication system and, or arrangement whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or other form of prior individual authorisation;

"consumer" means any natural person who uses or requests a publicly available electronic communications service, for purposes which are outside his trade, business, craft or profession;

"the Council" means the Council of the European Union;

"decision" includes any determination, directive, measure, requirement or specification however so described made by the Authority and the word "decision" shall be construed accordingly;

"[Decision No. 676/2002/EC](#)" means [Decision No. 676/2002/EC](#) of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision);

"[Directive 2008/63/EC](#)" means [Directive 2008/63/EC](#) of 20 June 2008 on competition in the markets in telecommunications terminal equipment;

"[Electronic Communications Code](#)" means the [Directive \(EU\) 2018/1972](#) of the European Parliament and of the Council establishing the European Electronic Communications Code;

"electronic communications network" means transmission systems, whether or not based on a permanent infrastructure or centralised administration capacity, and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit-switched and packet-switched, including Internet) and mobile networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;

"electronic communications service" means a service normally provided for remuneration through electronic communications networks, which encompasses, with the exception of services providing or exercising editorial control over, content transmitted using electronic communications networks and services, the following types of services:

- (a) "internet access service" as defined in point (2) of the second paragraph of Article 2 of [Regulation \(EU\) 2015/2120](#);
- (b) interpersonal communications service; and
- (c) services consisting wholly or mainly in the conveyance of signals such as transmission services used for the provision of machine-to-machine services and for broadcasting;

"emergency communication" means communications by means of interpersonal communications services between an end-user and the PSAP with the goal to request and receive emergency relief from emergency services;

"emergency service" means a service, recognized as such by the Government, that provides immediate and rapid assistance in situations where there is, in particular, a direct risk to life or limb, to individual or public health or safety, to private or public property, or to the environment, in accordance with national law;

"end-user" means a user not providing public electronic communications networks or publicly available electronic communications services;

"end-users with disabilities" means persons with disabilities as defined in the [Equal Opportunities \(Persons with Disability\) Act](#), whose special needs as end-users are either due to a disability or related to ageing;

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"Frequency Plan" means the National Frequency Allocation Plan as adopted by the Authority and published in accordance with the provisions of this Act;

"general authorisation" means the legal framework established

by or under this Act ensuring rights for the provision of electronic communications networks or services and laying down sector specific obligations that may apply to all or to specific types of electronic communications networks and services in accordance with this Act;

"harmful interference" means interference which endangers the functioning of a radio navigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radio communications service operating in accordance with the applicable international, European Union or national regulations;

"harmonised radio spectrum" means radio spectrum for which harmonised conditions relating to its availability and efficient use have been established by way of technical implementing measures in accordance with Article 4 of EU [Decision No. 676/2002/EC](#) (Radio Spectrum Decision);

"interconnection" means a specific type of access implemented between public network operators by means of the physical and logical linking of public electronic communications networks used by the same or a different undertaking in order to allow the users of one undertaking to communicate with users of the same or another undertaking, or to access services provided by another undertaking where such services are provided by the parties involved or other parties who have access to the network;

"interpersonal communications service" means a service normally provided for remuneration that enables direct interpersonal and interactive exchange of information *via* electronic communications networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipient(s), and does not include services which enable interpersonal and interactive communication merely as a minor ancillary feature that is intrinsically linked to another service;

"internal market" means the internal market of the European Union;

"ITU Radio Regulations" means the Radio Regulations annexed to, or regarded as being annexed to the most recent International Telecommunications Convention of the International Telecommunications Union (ITU) which is in force at that time;

"local loop" means the physical path used by electronic communications signals connecting the network termination point to a distribution frame or equivalent facility in the fixed public electronic communications network;

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

"the Minister" means the Minister responsible for communications;

"national regulatory authority" means the body or bodies notified for the purposes of European Union law to the European Commission by a Member State as having been assigned tasks in

the regulation of electronic communications services, electronic communications networks, associated facilities and associated services;

"network termination point" means the physical point at which an end-user is provided with access to a public electronic communications network, and which in the case of networks involving switching or routing is identified by means of a specific network address, which may be linked to a number or name of an end-user;

"number-based interpersonal communications service" means an interpersonal communications service which connects with publicly assigned numbering resources, namely a number or numbers in national or international numbering plans, or which enables communication with a number or numbers in national or international numbering plans:

Provided that the mere use of a number as an identifier should not be considered to be equivalent to the use of a number to connect with publicly assigned numbers and should therefore, in itself, not be considered to be sufficient to qualify a service as a number-based interpersonal communication service;

"operator" means an undertaking providing or authorised to provide a public communications network or an associated facility;

"prescribed" means prescribed by regulations made under this Act;

"provision of an electronic communications network" means the establishment, operation, control or making available of such a network;

"public electronic communications network" means an electronic communications network used wholly or mainly for the provision of electronic communications services available to the public which support the transfer of information between network termination points;

"public safety answering point" or "PSAP" means a physical location where an emergency communication is first received under the responsibility of a public authority or a private organisation recognized by the Government;

"publicly available electronic communications service" means an electronic communications service available to the public;

"radio spectrum allocation" means the designation of a given radio spectrum band for use by one or more types of radio communications services, where appropriate, under specified conditions;

"[Regulation \(EU\) No. 531/2012](#)" means Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the European Union;

"[Regulation \(EU\) 2015/2120](#)" means Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and

amending [Directive 2002/22/EC](#) on universal service and users' rights relating to electronic communications networks and services and [Regulation \(EU\) No. 531/2012](#) on roaming on public mobile communications networks within the European Union;

"RSPG" means the Radio Spectrum Policy Group established by the European Commission Decision of 11 June 2019 setting up the Radio Spectrum Policy Group;

"satellite earth station network" mean a configuration of two or more earth stations which inter-work by means of a satellite;

"security of networks and services" means the ability of electronic communications networks and services to resist, at a given level of confidence, any action that compromises the availability, authenticity, integrity or confidentiality of those networks and services, of stored or transmitted or processed data, or of the related services offered by, or accessible through, those electronic communications networks or services;

"shared use of radio spectrum" means access by two or more users to use the same radio spectrum bands under a defined sharing arrangement, authorised on the basis of a general authorization, individual rights of use for radio spectrum or a combination thereof, including regulatory approaches such as licensed shared access aiming to facilitate the shared use of a radio spectrum band, subject to a binding agreement of all parties involved, in accordance with sharing rules as included in their rights of use for radio spectrum in order to guarantee to all users predictable and reliable sharing arrangements, and without prejudice to the application of competition law;

"significant market power" or "SMP" means a position equivalent to dominance enjoyed by an undertaking either individually or jointly with others that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers;

"special rights" means the rights that are granted to a limited number of undertakings which, within a given geographical area:

- (i) designates or limits to two or more the number of such undertakings authorised to provide an electronic communications service or undertake an electronic communications activity, otherwise than according to objective, proportional and non-discriminatory criteria, or
- (ii) confers on undertakings, otherwise than according to such criteria, legal or regulatory advantages which substantially affect the ability of any other undertaking to provide the same electronic communications activity in the same geographical area under substantially equivalent conditions;

"terminal equipment" means terminal equipment as defined in point (1) of Article 1 of EU Commission [Directive 2008/63/EC](#);

"Tribunal" means the Administrative Review Tribunal established by article 5 of the [Administrative Justice Act](#);

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"undertaking" means a person providing or authorised to provide electronic communications networks and, or services or associated facilities;

"universal services" means the minimum set of services of specified quality which is available to all users regardless of their geographical location and, in the light of specific national conditions, at an affordable price as may be defined by or under this Act;

"user" means any person using or requesting a publicly available electronic communications service;

"very high capacity network" means either an electronic communications network which consists wholly of optical fibre elements at least up to the distribution point at the serving location, or an electronic communications network which is capable of delivering, under usual peak-time conditions, similar network performance in terms of available downlink and uplink bandwidth, resilience, error-related parameters, and latency and its variation:

Provided that network performance can be considered similar regardless of whether the end-user experience varies due to the inherently different characteristics of the medium by which the network ultimately connects with the network termination point; and

"voice communications service" means a publicly available electronic communications service which uses specifically assigned numbering resources from the national numbering plan for originating and receiving, directly or indirectly, national calls or national and international calls through a number or numbers in a national or international numbering plan. "Voice communications service" is a subset of "number-based interpersonal communications service."

## PART II

### REGULATION OF ELECTRONIC COMMUNICATIONS

*Amended by:  
VII. 2004.13.*

#### 1. Competent Authority to regulate Electronic Communications

3. (1) The Malta Communications Authority established under the [Malta Communications Authority Act](#) shall be the competent authority to regulate electronic communications under this Act and, insofar as is provided in this Act, to enforce the provisions of this Act.

Malta  
Communications  
Authority.  
*Substituted by:  
XVIII. 2000.31;  
VII. 2004.14;  
IX. 2011.4.  
Amended by:  
LII. 2021.15.  
Cap. 418.*

(2) The Authority shall have a separate annual budget which it shall implement autonomously, which budget shall be made public. The Authority shall be afforded adequate financial and human resources to carry out its functions under this Act and under any other applicable laws relating to electronic communications which

the Authority is entitled to enforce, including such resources to enable the Authority to actively participate in and contribute to BEREC and to any functions related to international cooperation.

(3) In fulfilling its functions and duties under this Act and under any other laws relating to electronic communications which the Authority is entitled to enforce, the Authority shall actively support the goals of BEREC of promoting greater regulatory coordination and consistency in the application of the [Electronic Communications Code](#), and shall also take the utmost account of the guidelines, opinions, recommendations, common positions, best practices and methodologies adopted by BEREC when the Authority is adopting decisions for national markets.

(4) In the exercise of its functions and duties under this Act and under any other laws relating to electronic communications which the Authority is entitled to enforce, the Authority shall take utmost account of the relevant European Commission recommendations. With reference to recommendations issued in accordance with Article 38 of the [Electronic Communications Code](#), the Authority shall, if it chooses not to follow a recommendation, inform the European Commission, giving the reasons for its position.

Objectives of the Authority.

*Substituted by:*  
*XVIII. 2000.31;*  
*VII. 2004.15.*

*Amended by:*  
*IX. 2011.3; 5;*  
*VIII. 2014.41.*

*Substituted by:*  
*LII. 2021.14.*

**4.** (1) In the carrying out of its tasks at law, the Authority shall, to the extent that it is empowered at law, pursue and take the utmost account of each of the following policy objectives:

- (a) promote connectivity and access to, and take-up of, very high capacity networks, including fixed, mobile and wireless networks, by all citizens and businesses of the European Union;
- (b) promote competition in the provision of electronic communications networks and associated facilities, including efficient infrastructure-based competition, and in the provision of electronic communications services and associated services;
- (c) contribute to the development of the internal market by removing remaining obstacles to, and facilitating convergent conditions for, investment in, and the provision of, electronic communications networks, electronic communications services, associated facilities and associated services, throughout the European Union, by developing common rules and predictable regulatory approaches, by favouring the effective, efficient and coordinated use of radio spectrum, open innovation, the establishment and development of trans-European networks, the provision, availability and interoperability of pan-European services, and end-to-end connectivity;
- (d) promote the interests of the citizens of the European Union, by ensuring connectivity and the widespread availability and take-up of very high capacity networks, including fixed, mobile and wireless networks, and of electronic communications services, by enabling maximum benefits in terms of choice,

price and quality on the basis of effective competition, by maintaining the security of networks and services, by ensuring a high and common level of protection for end-users through the necessary sector-specific rules and by addressing the needs, such as affordable prices, of specific social groups, in particular end-users with disabilities, elderly end-users and end-users with special social needs, and choice and equivalent access for end-users with disabilities:

Provided that where the European Commission establishes benchmarks and reports on the effectiveness of the measures taken by the Authority towards achieving the objectives referred to in this sub-article, the Authority shall, where necessary, assist the European Commission.

(2) The Authority shall, in pursuit of the policy objectives referred to in sub-article (1), *inter alia*:

- (a) promote regulatory predictability by ensuring a consistent regulatory approach over appropriate review periods and through cooperation with other national regulatory and competent authorities in other Member States, with BEREC, with the RSPG and with the European Commission;
- (b) ensure that, in similar circumstances, there is no discrimination in the treatment of providers of electronic communications networks and services;
- (c) apply national law and European Union law in a technically neutral fashion, to the extent that this is consistent with the achievement of the objectives set out in sub-article (1);
- (d) promote efficient investment and innovation in new and enhanced infrastructures, including by ensuring that any access obligation takes appropriate account of the risk incurred by the investing undertakings and by permitting various cooperative arrangements between investors and parties seeking access to diversify the risk of investment, whilst ensuring that competition in the market and the principle of non-discrimination are preserved;
- (e) take due account of the variety of conditions relating to infrastructure, competition, the circumstances of end-users and, in particular consumers in the various geographic areas in Malta including local infrastructure managed by natural persons on a not-for-profit basis; and
- (f) impose *ex-ante* regulatory obligations only to the extent necessary to secure effective and sustainable competition in the interest of end-users and relax or lift such obligations as soon as that condition is fulfilled.

(3) The Authority shall, in the performance of its functions at law, act impartially, objectively, transparently and in a non-discriminatory and proportionate manner.

(4) The Authority shall contribute to the development of the internal market by working in a transparent manner with the national regulatory authorities of other Member States, the European Commission and BEREC, in order to ensure the consistent application in all Member States of the [Electronic Communications Code](#). In doing so the Authority shall, in particular, work with the European Commission and BEREC to identify the types of instruments and remedies best suited to address particular types of situations in the market.

Strategic planning and coordination of radio spectrum policy.  
Added by:  
LII. 2021.17.

**4A.** (1) The Authority shall cooperate with the competent authorities in other Member States and with the European Commission in the strategic planning and harmonisation of the use of radio spectrum in the European Union in accordance with European Union policies for the establishment and functioning of the internal market in electronic communications. In doing so it shall take into consideration, *inter alia*, the economic, safety, health, public interest, freedom of expression, cultural, scientific, social and technical aspects of European Union policies, as well as the various interests of radio spectrum user communities, with the aim of optimising the use of radio spectrum and avoiding harmful interference.

(2) The Authority in cooperating with the competent authorities in other Member States and with the European Commission shall promote the coordination of radio policy approaches in the European Union and, where appropriate, harmonised conditions with regard to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market in electronic communications.

(3) The Authority shall, through the RSPG, cooperate with the competent authorities in other Member States and with the European Commission in accordance with sub-article (1), and upon their request with the European Parliament and with the Council, in support of the strategic planning and coordination of radio spectrum policy approaches in the European Union, by:

- (a) developing best practices on radio spectrum related matters, with a view to implementing the [Electronic Communications Code](#);
- (b) facilitating the coordination between Malta and other Member States with a view to implementing the [Electronic Communications Code](#) and other European Union law and to contributing to the development of the internal market; and
- (c) co-ordinating the approaches to the assignment and authorisation of use of radio spectrum and publishing reports or opinions on radio spectrum related matters.

5. (1) This Act shall apply to the various electronic communications markets unless otherwise stated in this Act or any other law.

(2) This Act shall not apply to the content of any communications, howsoever described, transmitted through any electronic communications network.

(3) The provisions of this Act shall be without prejudice to:

- (a) obligations imposed by any other law in respect of services provided using electronic communications networks and services;
- (b) measures taken at European Union or national level, in accordance with European Union law, to pursue general interest objectives in particular relating to the protection of personal data and privacy, content regulation and audiovisual policy;
- (c) the operation of any other law relating to radio and telecommunications terminal equipment;
- (d) any action taken for public order and public security purposes and for defence; or
- (e) Regulations (EU) [No. 531/2012](#) and (EU) [2015/2120](#) and the [Radio Equipment Regulations](#).

Applicability of this Act.  
Amended by:  
*XIX. 1998.3;*  
*XVIII. 2000.31.*  
Substituted by:  
*VII. 2004.17.*  
Amended by:  
*IX. 2011.3, 6;*  
*VIII. 2014.42;*  
*LII. 2021.18.*

S.L. 427.41.

5A. (1) The Authority shall be responsible for the following tasks:

- (a) implementing *ex ante* market regulation, including the imposition of access and interconnection obligations;
- (b) ensuring the resolution of disputes between undertakings;
- (c) managing the general authorisation framework;
- (d) developing the frequency plan;
- (e) carrying out radio spectrum management and decisions, including matters relating to market-shaping and competition elements of processes related to the rights of use for radio spectrum for electronic communications networks and services;
- (f) contributing to the protection of end-user rights in the electronic communications sector, in coordination, where relevant with other competent authorities;
- (g) developing and managing the national numbering plan and the granting of rights of use for all national numbering resources;
- (h) assessing and monitoring closely market-shaping and competition issues regarding open internet access;
- (i) ensuring the integrity and security of public electronic communications networks and publicly available electronic communications service;
- (j) assessing the unfair burden and calculating the net cost

Tasks onerous on the Authority specific to electronic communications.  
Added by:  
*LII. 2021.19.*

of the provision of universal service; and

(k) ensuring number portability between providers of voice communications services.

(2) The performance of the tasks listed under sub-article (1) shall be without prejudice to any other tasks which the Authority is required to perform by law.

(3) The Authority shall publish in an easily accessible form the tasks assigned to it under the [Electronic Communications Code](#) and where applicable those assigned to other competent authorities, as well as any change thereof.

## **2. General provisions relating to the role of the Authority and the rights and obligations of undertakings**

**6.** Any person shall install or operate any electronic communications network or provide any electronic communications service in Malta in compliance with this Act.

*Added by:*  
*VII. 2004.18.*

Compliance when operating a network or providing a service.

*Added by:*  
*XVIII. 2000.31.*  
*Substituted by:*  
*VII. 2004.19.*  
*Amended by:*  
*XXX. 2007.22.*

Special obligations of providers of public electronic communications networks.

*Added by:*  
*XVIII. 2000.31.*  
*Substituted by:*  
*VII. 2004.19.*  
*Amended by:*  
*XXX. 2007.23;*  
*IX. 2011.7;*  
*LII. 2021.20.*

**7.** An undertaking authorised by or under this Act to operate a public electronic communications network shall, in addition to complying with the provisions of this Act and with obligations in accordance with its authorisation, ensure:

(a) that the capacity, quantity and features of the network are sufficient for providing and maintaining an efficient electronic communications network;

(b) that the network is sufficient for and compatible with such international electronic communications services as the Authority may specify;

(c) the security of the network and any extension thereof; and

(d) that no person shall carry out any works or perform any other act, or be entrusted to carry out such works or perform such act, for the construction, repair, maintenance, alteration or control of any electronic communications networks and, or equipment unless he is duly qualified and possesses such qualifications to carry out such works or perform such act as may be prescribed in accordance with the provisions of article 47.

- 8.** An undertaking authorised by or under this Act to provide a publicly available electronic communications service shall -
- (a) provide such services efficiently, complying with the standards for quality generally accepted in the industry or as may from time to time be specified by the Authority;
  - (b) notify the Authority and publish by notice in the media when the services are to be interrupted for the installation or repair or the changing of apparatus;
  - (c) establish an efficient mechanism for receiving complaints and repairing failures in its networks and in the services provided.
- 9.** The Authority shall, subject to any procedures as may be prescribed under this Act and in accordance with the principles of competition law, define relevant markets appropriate to national circumstances, in particular relevant geographic markets and it shall carry out an analysis of such relevant markets.
- 10.** The Authority shall establish and manage the national numbering plan for electronic communication services, and shall control the allocation and assignment of all national numbering resources.
- 11.** (1) Without prejudice to the [Electronic Communications Code](#), no restrictions shall be imposed or maintained on the provision of electronic communications services over electronic communications networks established by an undertaking providing electronic communications services, over infrastructures provided by third parties, or by means of sharing networks, other facilities or sites.
- (2) No exclusive or special rights for the establishment and, or the provision of electronic communications networks, or for the provision of publicly available electronic communications services shall be granted or maintained in force.
- 12.** *(Deleted by Act LII.2021.24).*
- 12A.** *(Deleted by Act LII.2021.24).*
- Special obligations of providers of publicly available electronic communications services.  
*Added by: XVIII. 2000.31.  
Substituted by: VII. 2004.19.  
Amended by: XXX. 2007.24;  
IX. 2011.3, 8.*
- Market definition and analysis.  
*Substituted by: LII. 2021.21.*
- Numbers.  
*Added by: XVIII. 2000.31.  
Substituted by: VII. 2004.19.  
Amended by: L.N. 425 of 2007'  
XXX. 2007.25;  
IX. 2011.10, 11.  
Substituted by: LII. 2021.22.*
- Prohibition of restrictions.  
*Amended by: XVIII. 2000.31.  
Substituted by: VII. 2004.19;  
IX. 2011.12.  
Amended by: LII. 2021.23.*
- Imposition of sharing of wiring obligations  
*Added by: IX. 2011.13.  
Substituted by: XVIII. 2016.20.*
- Access to in-building physical infrastructure.  
*Added by: XVIII. 2016.20.  
Cap. 81.*

**3. Access and Interconnection**

Functions of the Authority with regard to access and interconnection.

*Amended by: XVIII. 2000.31; XXVII. 2002.58. Substituted by: VII. 2004.19. Amended by: IX. 2011. 14. Cap. 418.*

**13.** The Authority shall, acting in accordance with its objectives as stated in this Act and in the [Malta Communications Authority Act](#), encourage and where appropriate, ensure, in accordance with the provisions made by or under this Act, adequate access and interconnection and interoperability of services in such a way as to:

- (a) promote efficiency;
- (b) promote sustainable competition;
- (c) promote efficient investment and innovation; and
- (d) give the maximum benefit to end-users.

Prohibition of restrictions.

*Amended by: XVIII. 2000.31; XXVII. 2002.58. Substituted by: VII. 2004.19. Amended by: L.N. 425 of 2007; XXX. 2007.26; IX. 2011.15.*

**14.** *(Deleted by Act LII.2021.25).*

**4. Accounting separation and financial reporting**

Obligation of undertakings in relation to accounting separation.

*Amended by: XVIII. 2000.31; XXVII. 2002.58. Substituted by: VII. 2004.19. Amended by: L.N. 425 of 2007; XXX. 2007.27; IX. 2011.16.*

**15.** *(Deleted by Act LII.2021.25).*

Financial reporting.

*Amended by: XVIII. 2000.31. Substituted by: VII. 2004.19. Amended by: L.N. 425 of 2007; XXX. 2007.28; IX. 2011.17. Cap. 386.*

**16.** *(Deleted by Act LII.2021.25).*

*Substituted by: IX. 2011.18.*

General authorisations.

*Amended by: XVIII. 2000.31. Substituted by: VII. 2004.19. Amended by: IX. 2011.19.*

**17.** *(Deleted by Act LII.2021.25).*

18. *(Deleted by Act LII.2021.25).* Administrative charges.  
*Amended by: XVIII. 2000.31. Substituted by: VII. 2004.19. Amended by: IX. 2011.20.*
19. *(Deleted by Act LII.2021.25).* Authorisation of electronic communications networks and services.  
*Amended by: XIX. 1998.3; XVIII. 2000.31; VI. 2001.29. Substituted by: VII. 2004.19. Amended by: L.N. 425 of 2007; XXX. 2007.29; IX. 2011.21.*
20. *(Deleted by Act LII.2021.25).* Amendments of general authorisation and of rights of use.  
*Added by: IX. 2011.23.*
21. *(Deleted by Act LII.2021.25).* Requirement to obtain other authorisations, etc., required at law.  
*Added by: XVIII. 2000.31. Substituted by: VII. 2004.19. Amended by: IX. 2011.24.*
- 6. Obligations of vertically integrated public undertakings**
22. A vertically integrated undertaking, over which the Government of Malta or of a Member State has effective control, which provides electronic communications networks and which is in a dominant position shall not discriminate in favour of its own activities.
- 7. End-user interests and rights**
23. *(Deleted by Act LII.2021.26).* Prohibition of discrimination in one's own favour.  
*Amended by: XVIII. 2000.31. Substituted by: VII. 2004.19. Amended by: L.N. 425 of 2007; XXX. 2007.30. Re-numbered: IX. 2011.22.*
- End-user rights and the information to be included.  
*Amended by: XVIII. 2000.31. Substituted by: VII. 2004.19. IX. 2011.25.*

Nullity of the contract and of certain terms and conditions.

*Amended by:*  
*XVIII. 2000.31.*  
*Substituted by:*  
*VII. 2004.19;*  
*IX. 2011.26.*

**24.** *(Deleted by Act LII.2021.26).*

### PART III

#### LEGAL PROTECTION OF SERVICES BASED ON OR CONSISTING OF CONDITIONAL ACCESS

Legal protection of services based on or consisting of conditional access.

*Added by:*  
*IX. 2003.89.*  
*Amended by:*  
*VII. 2004.21;*  
*L.N. 425 of 2007.*  
*Re-numbered:*  
*IX. 2011.22.*  
*Amended by:*  
*LII. 2021.27.*

**25.** (1) In this article:

"broadcaster" means the natural or legal person who has editorial responsibility for the composition of television programme services for reception by the general public and transmits them, or has them transmitted, complete and unchanged, by a third party;

"conditional access" means any technical measure or arrangement permitting access in an intelligible form, and subject to prior individual authorisation, to one of the services constituting a protected service;

"conditional access device" means any equipment, software, or arrangement designed or adapted to give access in an intelligible form to one of the services constituting a protected service;

"illicit device" means any equipment, software, or arrangement designed or adapted to give access in an intelligible form to one of the services constituting a protected service without the authorisation of the service provider;

"programme service" means all the items within a single service provided by a given broadcaster;

"protected service" means any of the following services when provided against remuneration and on the basis of conditional access:

- (a) television programme services;
- (b) radio broadcasting services including radio programmes intended for reception by the public, transmitted by wire or over the air, including by satellite;
- (c) information society services offered by electronic means at a distance and at the individual request of the recipient of the services; or
- (d) the provision of conditional access to the above services considered as a service in its own right.

Infringing acts constituting a criminal offence.

(2) Any person who -

- (a) manufactures or produces illicit devices for commercial purposes; or
- (b) imports illicit devices into Malta for commercial purposes; or

- (c) distributes illicit devices in or from Malta for commercial purposes; or
- (d) sells or rents out illicit devices for commercial purposes; or
- (e) is in possession of illicit devices for commercial purposes; or
- (f) installs, maintains or replaces illicit devices for commercial purposes; or
- (g) commercially promotes, markets or advertises illicit devices,

shall, on conviction, be liable to imprisonment for a term not exceeding one year or to a fine (*multa*) of twenty-five thousand euro (€25,000) or to both such fine and imprisonment.

(3) In proceedings taken under sub-article (2) the Court shall order the Commissioner of Police to destroy goods established to be illicit devices without compensation of any sort to any person and, where a person is found guilty of infringing the provisions of sub-article (2) in respect of the said goods, at the cost of that person.

Destruction of illicit devices.

(4) A provider of a protected service whose interests are affected by any act mentioned in sub-article (2)(a) to (g) shall have against the perpetrator of any such act and in respect of such act:

Civil proceedings.

- (a) a civil action for damages, and
- (b) a right to demand a warrant of prohibitory injunction to obtain provisional protection of his interests, and
- (c) a right to demand an order from the competent Court for the destruction or, if appropriate, the disposal outside commercial channels of illicit devices.

#### PART IV

*Added by:  
XII. 2010.5.*

#### RADIOCOMMUNICATIONS

**26.** (1) In this Part:

"apparatus" or "equipment" means an electrical or electronic product, which intentionally emits and, or receives radio waves for the purpose of radiocommunication and, or radiodetermination, or an electrical or electronic product which must be completed with an accessory, such as antenna, so as to intentionally emit and, or receive radio waves for the purpose of radiocommunication and, or radiodetermination; "apparatus general authorisation" means the framework established by or under this Part laying down the rights and obligations of persons making use of any such radiocommunications apparatus as the Minister may from time to time in accordance with the provisions of this Part designate by order in the Gazette as being covered by a apparatus general authorisation;

Interpretation.  
*Added by:  
XII. 2010.5.  
Amended by:  
IX. 2011.3.  
Re-numbered by:  
IX. 2011.27.  
Amended by:  
LII. 2021.28.*

"authorisation" includes an individual authorisation or licence however so described issued under this Part, or any apparatus general authorisation however so described applicable to any

radiocommunications apparatus as may be provided by or under this Part;

"broadcast receiving apparatus" means any apparatus used or capable of being used for the reception of sound or visual image or of sound and visual image transmissions intended for direct reception by the general public;

"installed" means radiocommunications apparatus that is connected to a source of energy so as to intentionally emit and, or receive radio waves;

"Part" means this Part of this Act and includes any regulations made thereunder unless the context otherwise requires;

"radiocommunications" means communications involving the transmission, emission and, or reception by means of radio waves;

"radiocommunications individual licence" means an individual licence given in accordance with article 30;

"radiodetermination" means the determination of the position, velocity and, or other characteristics of an object, or the obtaining of information relating to these parameters, by means of the propagation properties of radio waves; and

"radio waves" means electromagnetic waves of frequencies arbitrarily lower than 3000 GHz, propagated in space without artificial guide.

(2) For the purpose of this Part any apparatus ordinarily used as a distinctive component part of an apparatus for radiocommunications shall be deemed to be intended to be so used, unless the contrary is proved.

Delegation of powers under this Part.

*Added by:*  
*XII. 2010.5.*  
*Re-numbered by:*  
*IX. 2011.27.*  
*Amended by:*  
*VIII. 2014.43.*

**27.** *(Deleted by Act LII.2021.29).*

Radio-communications apparatus authorisations by the Minister.

*Added by:*  
*XII. 2010.5.*  
*Re-numbered by:*  
*IX. 2011.27.*  
*Amended by:*  
*V. 2012.56.*

**28.** *(Deleted by Act LII.2021.29).*

Enforcement.

*Added by:*  
*XII. 2010.5.*  
*Re-numbered by:*  
*IX. 2011.27.*

**29.** *(Deleted by Act LII.2021.29).*

Individual licences.  
*Substituted by:*  
*LII. 2021.30.*

**30.** (1) Unless otherwise provided by or under this Part, no person shall, without a radiocommunications individual licence given in writing by the Authority, install or use an apparatus.

(2) A radiocommunications individual licence granted under this article may be issued subject to such terms, conditions and, or limitations as the Authority may think fit, including in particular limitations as to the apparatus which may be installed or used, the places where, the purposes for which, the circumstances in which and the persons by whom the apparatus may be used, as may be established under such a licence:

Provided that any such licence may only be issued if the prescribed fee is first received in full:

Provided further that any such licence may be revoked, or the terms, conditions or limitations thereof varied by a notice in writing of the Authority served on the holder of the individual licence or by a general notice issued by the Authority, applicable to individual licences of the class to which the individual licence in question belongs, and made public.

(3) A radiocommunications individual licence shall, unless previously revoked by the Authority, continue to be in force for such period as may be specified in the licence.

**30A.** (1) The Authority may by decision issue any apparatus general authorisation. In doing so the Authority shall establish any such terms and conditions, including those of a technical nature, as it may consider necessary, in particular to ensure the efficient use of radio spectrum:

Apparatus general  
authorisations.  
Added by:  
LII. 2021.31.

Provided that the Authority may by decision amend any such terms or conditions.

(2) In issuing or amending any apparatus general authorisation the Authority shall first publish on its website and, or any other means of communication, a statement of the proposed apparatus general authorisation or of any amendments thereto, giving any interested parties the opportunity to comment on the proposed apparatus general authorisation or amendments thereto within a period the Authority considers reasonable:

Provided that the requirement for the Authority to publish a statement of the proposed apparatus general authorisation or of any amendments thereto and to give any interested parties the opportunity to comment on the proposed apparatus general authorisation or amendments thereto shall not apply where such amendments are strictly limited to compliance with any international obligations of Malta.

(3) The Authority shall ensure that any apparatus general authorisations or amendments thereto are given publicity.

**30B.** (1) The Authority may require any person who:

- (a) is using an apparatus in breach of any of the provisions of this Part and, or of any authorisation conditions as may be applicable to that apparatus; or
- (b) is using or allowing such apparatus to be used for unauthorised frequencies,

Enforcement.  
Added by:  
LII. 2021.31.

to desist from the use of any such apparatus and, or require such

a person to deliver the apparatus to the Authority:

Provided that the Authority may seize and, or retain any such apparatus and, or cause the use of any such apparatus to be disabled or restricted in any manner, under such conditions and for such period of time as the Authority may specify where it results to the Authority that such apparatus is being used in breach of this Part or of any authorisation conditions that may apply in relation to the said apparatus.

(2) Any expenses incurred by the Authority in the exercise of its functions under this article including in the seizure, retention, or storage however so described of the said apparatus, shall be recoverable as a civil debt by the Authority from any person acting in breach of this article.

Penalties.  
Added by:  
XII. 2010.5.  
Re-numbered by:  
IX. 2011.27.  
Substituted by:  
LII. 2021.32.

**31.** Unless otherwise provided in this Part, any person who contravenes any of the provisions of this Part, or of any regulations made thereunder, or who acts in breach of any terms, conditions or limitations, however so described, attached to an individual licence or to an apparatus general authorisation, shall be liable on conviction to a fine (*multa*) of not less than five hundred euro (€500) and not more than twenty five thousand euro (€25,000) in respect of each apparatus, and upon the demand of the prosecution, the Court may order the apparatus to be forfeited and delivered to the Authority to be disposed of or stored, as the Authority may consider appropriate in the circumstances:

Provided that the Authority shall in such instances recover as a civil debt any costs it may incur in the disposal or storage however so described of any such apparatus from the person found guilty.

Harmful  
interference  
caused by  
radiocommunicati  
ons apparatus.  
Added by:  
LII. 2021.31.

**31A.** (1) Radiocommunications apparatus shall only be used in a manner so as to effectively use and support the efficient use of radio spectrum in order to avoid harmful interference.

(2) The Authority may authorise a public body established at law to install or use radiocommunications apparatus capable of causing deliberate interference. Any such apparatus shall be used exclusively to satisfy exigencies of defence, public security requirements, including the securing or maintaining security or good order and discipline in correctional or detention institutions, however so described:

Provided that no such authorisation shall be required in cases of manifest urgency which may cause a threat to public security or public safety.

(3) An authorisation granted by the Authority under this article shall not in any manner constitute an authorisation to legally intercept communications.

(4) In granting an authorisation in accordance with this article, the Authority shall establish any technical and operational conditions which it deems appropriate to safeguard the integrity of public electronic communications networks and, or services, including radiodetermination.

(5) An authorisation granted under this article shall be in writing.

32. No authorisation is required for sound only broadcast receivers.

Sound only broadcast receivers.  
Added by:  
XII. 2010.5.  
Re-numbered by:  
IX. 2011.27.

33. The Minister may, after consultation with the Authority, by order in the Gazette exempt certain categories of apparatus from the requirements of articles 30 and 30A.

Minister may exempt certain categories from requirements of articles 30 and 30A.  
Added by:  
XII. 2010.5.  
Re-numbered by:  
IX. 2011.27.  
Amended by:  
LII. 2021.34.

34. The Minister may make regulations for the better carrying out of any of the provisions of this Part and without prejudice to the generality of the aforesaid power, such regulations may in particular provide:

Power to make regulations.  
Added by:  
XII. 2010.5.  
Re-numbered by:  
IX. 2011.27.  
Amended by:  
LII. 2021.35.

- (a) for the manner in which radiocommunications apparatus however so described is to be installed, sold, hired, operated, maintained, protected or controlled, and in the case of any apparatus seized in accordance with articles 30 or 32, the manner as to the disposal and, or storage of any such apparatus;
  - (b) for the technical standards or specifications to be observed with respect to any radiocommunications apparatus;
  - (c) for any aspect relating to the use of radiocommunications by aircrafts and ships, including merchant ships, foreign warships and foreign military aircraft;
  - (d) that any person who contravenes any provision of any regulations made under this article shall either -
    - (i) be guilty of an offence punishable on conviction of a fine (*multa*) not exceeding twenty five thousand euro (€25,000), and, or five hundred euro (€500) for each day during which the offence continues; or
    - (ii) be guilty of an infringement punishable as an administrative fine provided that such fines do not exceed twenty five thousand euro (€25,000) for each infringement and, or five hundred euro (€500) for each day during which such infringement continues:
- Provided that:
- (A) the procedure for the imposition of such administrative fines shall allow for the right to be heard to be respected before

Cap. 418.

- any such fines are imposed;
- (B) the procedure for the imposition and contestation of such fines shall be that established in respect of fines imposed by the Authority under Part VII and Part VIII of the [Malta Communications Authority Act](#), and the relevant provisions of the said Act and of any regulations made thereunder in respect of any such procedure shall apply *mutatis mutandis* to administrative fines imposed by the Minister under this Part in such a manner that any reference to the Authority shall be construed as a reference to the Minister;
- (C) in all cases where the Minister or the Authority imposes an administrative fine in respect of anything done or omitted to be done by any person and such act or omission also constitutes a criminal offence, no proceedings may be taken or continued against the said person in respect of such criminal offence;
- (e) for any aspect relating to the form, substance and duration of any radiocommunications individual licence, the conditions on which such a licence is to be issued and held, the fees payable thereon and the nature and character of the apparatus authorised by the licence which a sea-going Maltese ship may be required to obtain to keep and use a radiocommunications installation;
- (f) for any fees and, or charges, however so described, that may be payable in relation to any matters regulated by this Part, including the issue or renewal of any individual radiocommunications licences or authorisations however so described:
- Provided that the Minister may, with the concurrence of the Minister responsible for finance, reduce or remit any such fee or charge. Before doing so the Minister shall first consult the Authority;
- (g) for any procedures for the out-of-court settlement of disputes that may arise, including any agreement in writing that may be entered into with a person accused of an offence under this Part, and any agreement for the payment of a fine in lieu of prosecution for an offence under this Part, this notwithstanding any provisions of this Part;
- (h) for any matter that may be required for the purpose of complying with any international obligations of Malta relating to radiocommunications including those relating to standards in Malta;

Provided that the Minister may, when making any regulations under this article which relate to standards, specifications or to matters of a strictly technical nature, make such regulations in the English language only.

35. (*Deleted by Act LII.2021.36*).

Exemption from the provisions of this Part.

*Added by:*  
*XII. 2010.5.*  
*Re-numbered by:*  
*IX. 2011.27.*

## PART V

### MANAGEMENT OF AND ACCESS TO RADIO SPECTRUM

*Re-numbered by:*  
*XII. 2010.5.*  
*Substituted by:*  
*LII. 2021.37.*

36. (1) In this Part, unless the context otherwise requires, "general authorisation" means a framework established by or under this Part laying down the rights and obligations for the use of radio spectrum, when the use of the radio spectrum is not subject to an individual licence.

Interpretation.  
*Added by:*  
*VII. 2004.23.*  
*Re-numbered by:*  
*XII. 2010.5.*  
*Substituted by:*  
*IX. 2011.29.*  
*Amended by:*  
*LII. 2021.38.*

(2) This Part regulates all radio spectrum, with the exception of any radio spectrum expressly regulated under any other law, and identified as such in the Frequency Plan.

37. (1) The Authority shall facilitate the use of radio spectrum, including shared use, under general authorisations issued under this Act or following individual rights of use for radio spectrum authorised by the Authority in accordance with this Act, or following explicit authorisation in accordance with any other law.

Authorisation of the use of radio spectrum.  
*Substituted by:*  
*LII. 2021.39.*

(2) The Authority shall limit the granting of individual rights of use for radio spectrum to situations where such rights are necessary to maximise efficient use because of demand and taking into account the criteria set out in this sub-article. In all other cases, the Authority shall set out the conditions for the use of radio spectrum in a general authorisation. To this end the Authority shall decide on the most appropriate regime for authorising the use of radio spectrum, taking account of:

- (a) the specific characteristics of the radio spectrum concerned;
- (b) the need to protect against harmful interference;
- (c) the development of reliable conditions for radio spectrum sharing, where appropriate;
- (d) the need to ensure technical quality of communications or service;
- (e) the objectives of general interest as laid down by the Minister in accordance with European Union law; and
- (f) the need to safeguard efficient use of radio spectrum.

(3) When considering whether to issue general authorisations or to grant individual rights of use for the harmonised radio spectrum, taking into account technical implementing measures

adopted in accordance with Article 4 of [Decision No. 676/2002/EC](#), the Authority shall seek to minimise problems of harmful interference, including in cases of shared use of radio spectrum on the basis of a combination of general authorisation and individual rights of use:

Provided that where appropriate, the Authority shall consider the possibility to authorise the use of radio spectrum based on a combination of general authorisation and individual rights of use, taking into account the likely effects of different combinations of general authorisations and individual rights of use and of gradual transfers from one category to the other on competition, innovation and market entry.

(4) The Authority shall seek to minimise restrictions on the use of radio spectrum by taking appropriate account of technological solutions for managing harmful interference in order to impose the least onerous authorisation regime possible.

(5) When taking a decision pursuant to sub-articles (1) and (2) with a view to facilitating the shared use of radio spectrum, the Authority shall ensure that the conditions for the shared use of radio spectrum are clearly set out. Such conditions shall facilitate efficient use of radio spectrum, competition and innovation.

**38.** (1) The Authority shall ensure the effective management of the radio spectrum for electronic communications networks and services in Malta in accordance with articles 4 and 4A. In doing so the Authority shall take into account that the radio spectrum is a public good that has an important social, cultural and economic value.

(2) Without prejudice to specific criteria and procedures adopted to grant rights of use of radio spectrum to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with European Union law:

- (a) no exclusive or special rights of use of radio spectrum shall be granted for the provision of electronic communications services; and
- (b) the Authority shall in the exercise of its functions with regard to the allocation of, the issuing of general authorisations in respect of, and the granting of individual rights of use for radio spectrum for electronic communications networks and, or services, act in accordance with objective, transparent, pro-competitive, non-discriminatory and proportionate criteria.

(3) In applying the provisions of this article, the Authority shall respect relevant international agreements, including the ITU Radio Regulations, and other agreements adopted in the framework of the ITU applicable to radio spectrum and may take public policy considerations into account.

(4) Upon the grant of rights for the use of radio spectrum and in

Management of  
radio spectrum.  
*Added by:*  
*VII. 2004.23.*  
*Re-numbered by:*  
*XII. 2010.5.*  
*Amended by:*  
*IX. 2011.3.*  
*Substituted by:*  
*IX. 2011.27.*  
*Amended by:*  
*VIII. 2014.44.*  
*Substituted by:*  
*LII. 2021.40.*

any case not less than once a year, the Authority shall publish the assignment of such rights in so far as these relate to the provision of electronic communications services.

**39.** (1) The Authority shall draw up, adopt and publish a frequency plan, which frequency plan shall from time to time be revised and published by the Authority as it may be deemed necessary:

Provided that before adopting or revising the frequency plan, as the case may be, the Authority shall in all instances first consult with the Minister:

Provided further that the requirement to consult with the Minister shall not apply where such revisions are limited to compliance with any international obligations of Malta.

(2) The Authority shall in drawing up the frequency plan, establish which frequencies are assigned under this Act and, or under any other law and the purposes for which they may be used.

**40.** (Deleted by Act LII.2021.42).

**41.** (Deleted by Act LII.2021.42).

**42.** (Deleted by Act LII.2021.42).

**43.** (Deleted by Act LII.2021.42).

**44.** (Deleted by Act LII.2021.42).

**45.** (Deleted by Act LII.2021.42).

**46.** The Authority, in consultation with the Minister, may, for the purpose of ensuring the most efficient and effective use of radio spectrum in accordance with the provisions of this Act, impose such requirements or take such measures as it may consider appropriate including but not limited to the redistribution or sharing of frequencies.

Adoption and publication of a frequency plan.  
Added by:  
VII. 2004.23.  
Re-numbered by:  
XII. 2010.5.  
Amended by:  
XII. 2010.7;  
IX. 2011.32.  
Substituted by:  
LII. 2021.41.

Technology neutrality.  
Added by:  
IX. 2011.35.

Service neutrality.  
Added by:  
IX. 2011.35.

Application of technology and service neutrality.  
Added by:  
IX. 2011.35.

Review of restrictions on existing rights.  
Added by:  
IX. 2011.35.

Rules preventing spectrum hoarding.  
Added by:  
IX. 2011.35.

Spectrum Trading.  
Added by:  
IX. 2011.35.

Powers of the Authority specific to radio spectrum.  
Substituted by:  
LII. 2021.43.

*Re-numbered by:*  
*XII. 2010.5.*

## **PART VI**

### **REGULATIONS**

*Regulations.*  
*Added by:*  
*VII. 2004.23.*  
*Amended by:*  
*L.N. 425 of 2007;*  
*XXX. 2007.32.*  
*Re-numbered by:*  
*XII. 2010.5.*  
*Amended by:*  
*XII. 2010.9;*  
*IX. 2011.3.*  
*Amended by:*  
*IX. 2011.36;*  
*LII. 2021.44.*

**47. (1)** The Minister may, either on the recommendation of the Authority or on his own initiative after consultation with the Authority, make regulations to give better effect to any of the provisions of this Act and in particular to:

- (a) regulate electronic communications services and, or networks including interconnection of networks, collocation and sharing of network elements and associated facilities, conduct of a geographical survey, carrier pre-selection, access to networks, rights of way, security of networks and services, the transmission or reception of satellite signals, the maintenance of and publication, and access to any information however so described, stipulate universal service obligations, any matter concerning numbers including portability, plans and allocation, any matter concerning e-mail forwarding or other similar services to ensure fair competition or for end-user protection purposes, the obligations of an undertaking having significant market power, competition and end-user or consumer protection rules including but not limited to rules relating to the suspension, termination and renewal of electronic communications services to end-users and, or consumers, the use of unfair terms in electronic communications contracts, unfair commercial practices in so far as they relate to the provision of electronic communications services to end-users and, or consumers, compensation and refund arrangements, billing procedures and billing accuracy, emergency communications and services, public warning systems, harmonised services for social value, and directory enquiry services;
- (b) provide for any requirements that may be imposed on undertakings to adopt accounting systems as may be prescribed and to keep such operational, accounting, financial, statistical and technical records as may be specified in the regulations, including the provision to the Authority of such statement, returns and other information about any company in which an undertaking has a controlling interest as the Authority may require for the carrying out of its functions under this Act;
- (c) provide for the conditions applicable to any authorisations and, or licences however so described, and returns and reports to be made to the Authority;
- (d) regulate the manner in which an electronic communications and, or radiocommunications infrastructure or apparatus is to be installed, operated, maintained, protected or controlled and the technical standards or specifications to be observed with respect

to such infrastructure or apparatus;

- (e) provide for the measures to be taken to ensure compliance with international and other standards used in the electronic communications and for the means to be used and the measures to be adopted to ensure safety and prevent danger, damage or nuisance in relation to any aspect of electronic communications;
- (f) regulate the quality and standard of electronic communications services to be provided, and quality of service targets and the establishment and maintenance of an efficient assistance service by undertakings for users;
- (g) provide for the complaint processing procedures to be implemented by an undertaking;
- (h) regulate television and radio distribution services including must carry rules, and the obligation to make channel capacity for public, governmental or educational use;
- (i) provide for any matter relating to the resolution of any disputes and, or complaints however so described relating to electronic communications networks or services including appeals from any decision, and the procedure to be followed in the resolution of cross-border disputes;
- (j) regulate the procedure for the resolution of disputes involving electronic communications networks and, or services and end-users and the relationship between the Authority and other public authorities responsible for the resolution of disputes;
- (k) provide for data retention obligations, and for rules regarding the access by the Authority and by the Police to data retained by undertakings, and prescribe measures to be taken by any person for the purpose of ensuring the inviolability of electronic communications transmitted and their confidentiality and the protection of privacy in relation to any electronic communications service including data protection measures in the electronic communications sector and data protection measures related to the use of information obtainable in the electronic communications sector for the purpose of direct marketing;
- (l) regulate the provision of information between Malta and the European Union and, or Members States;
- (m) regulate and provide for any fees and, or charges however so described that may be payable to the Authority;
- (n) provide for any matters that may be required for the purpose of complying with any international obligations of Malta related to electronic

communications in particular for the purpose of complying with any requirements however so described of the European Union;

- (o) regulate the allocation, assignment and use of radio spectrum for electronic communications networks and, or services, including the transfer or lease of rights to use radio frequencies to other undertakings and the procedure to be followed;
- (p) regulate any matter relating to the regulation, administration, management and authorisation of radio spectrum, including any aspect concerning the issue of authorisations, spectrum trading, the manner in which radio frequencies and, or apparatus as may be designated, may be used without the need of an authorisation, and the fees and conditions that may be imposed in relation thereto;
- (q) empower the Authority to impose administrative fines not exceeding the sum of two hundred and fifty thousand euro (€250,000) for each breach and, or five thousand euro (€5,000) for each day during which failure to comply with this Act continues, upon any person acting in contravention of any regulations made under this Act and to provide for the imposition and enforcement of such fines in accordance with the provisions of this Act and with the [Malta Communications Authority Act](#);
- (r) provide for rules to be applicable in relation to the imposition of any administrative fines as may be made under this article where any person fails to comply with this Act;
- (s) regulate the obligations including financial obligations of undertakings with regard to legal interception;
- (t) provide for any matter relating to the qualifications that a person may require in order to carry out any works or perform any other act relating to construction, repair, maintenance, alteration or control of any electronic communications service and, or network, including the tests to be employed for ascertaining whether a person possesses these qualifications;
- (u) prescribe penalties for criminal offences against any regulations made under this Act, including different fines (*multa*) for different offences and, or fines (*multa*) calculated in accordance with the duration of the commission of the offence:

Provided that any such regulations as may be made shall not provide for a fine (*multa*) of more than twenty five thousand euro (€25,000) and, or five hundred euro (€500) for each day during which the offence continues;

- (v) prescribe anything that may be prescribed under this Act:

Provided that the Minister may, when making any regulations under this sub-article which relate to standards or to matters of a strictly technical nature, make such regulations in the English language only.

(2) Without prejudice to the provisions of article 5A, the Minister may, after consultation with the Authority, by order in the Gazette empower any other public authority established by law to exercise any specific functions under this Act or under any regulations made thereunder where in the opinion of the Minister it is deemed appropriate in the particular circumstances for the said functions to be exercised by another public authority:

Provided that in issuing an order under this sub-article the Minister shall give his reasons therefor.

(3) The Minister may, when making any regulations under this article, require that the Authority acts in co-ordination and, or consults with any other public body or bodies as the Minister may from time to time determine. In doing so the Minister shall consult with any such other Minister as may be responsible for any such public bodies, and with the Authority.

(4) The Authority may by order in the Gazette amend the rights, conditions and procedures concerning general authorisations and rights of use for radio spectrum or for numbering resources or rights, to install facilities, as provided for in this Act or any regulations made thereunder. Any such amendments shall only be made in objectively justified cases and in a proportionate manner, taking into consideration, where appropriate, the specific conditions applicable to transferable rights of use for radio spectrum or for numbering resources:

Provided that except where the proposed amendments are minor and have been agreed with the holder of the rights or of the general authorisation, the Authority shall before making any amendments in accordance with this sub-article, give notice in such a manner as it considers appropriate of its intention to make such amendments, inviting interested parties, including users and consumers, to express their views on the proposed amendments within a period of not less than four weeks as may be specified in the notice. The said period of four weeks shall not apply in exceptional circumstances:

Provided further that the Authority shall publish any such amendments giving its reasons therefor.

## PART VII

## CRIMINAL OFFENCES

Offences of criminal nature specific to electronic communications.  
 Added by:  
 VII. 2004.23.  
 Amended by:  
 L.N. 425 of 2007.  
 Re-numbered by:  
 XII. 2010.5;  
 IX. 2011.34;  
 LII. 2021.45.

48. (1) Any person who -
- (a) constructs, repairs, maintains, alters or controls any apparatus or installation without having the qualifications required for that purpose by or under this Act;
  - (b) sells or offers for sale or provides or installs or uses any installation or apparatus which does not conform with such technical standards or specifications as are required or established by or under this Act, or which he knows, or has reasonable cause to believe, to be defective or incompatible with the services for which it was sold, provided, installed or used;
  - (c) provides any electronic communications service or installs or operates any electronic communications network or apparatus in breach of any provision of this Act or in breach of any condition, restriction or limitation imposed by or under this Act;
  - (d) uses any electronic communications network or apparatus supplied by an undertaking for a purpose other than that for which it was supplied, or neglects to observe instructions which are issued by an undertaking for the proper use of the electronic communications network or apparatus or makes improper use thereof,

shall be guilty of an offence under this Act and shall, on conviction, be liable to a fine (*multa*) not exceeding twenty-five thousand euro (€25,000) and in the case of a continuing offence for a further fine (*multa*) not exceeding five hundred euro (€500) for each day during which the offence continues.

(2) Any person who furnishes information to the Authority or the Minister which he knows, or has reasonable cause to believe to be false or misleading, or impedes or obstructs the Authority or the Minister, in the performance of any functions by or under this Act, shall be guilty of an offence under this Act, and shall on conviction, be liable to a fine (*multa*) not exceeding twenty-five thousand euro (€25,000) or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

(3) Any person who being a person employed or detailed for duty with or attached to an undertaking -

- (a) gives any information with regard to any message with which he becomes acquainted by reason of his office to any person not entitled to receive such information;
- (b) wilfully alters or suppresses any message or the designation of the person to whom it is transmitted or to whom it is addressed, without a good cause;
- (c) wilfully omits, delays or obstructs the transmission or

delivery of any message or cancels or destroys any message or an application for the transmission of any message without a good cause;

- (d) wilfully represents a message as having been sent by a person other than the sender or as being addressed to a person other than the addressee, or an application for the transmission of a message as having been made by a person other than the applicant, without good cause;
- (e) wilfully cancels or destroys any message not addressed to him or an application for the transmission of a message, without good cause; or
- (f) unlawfully withdraws from the control of an undertaking, or of an individual employed or detailed for duty with, or attached to, an undertaking, a message addressed to another person,

shall be guilty of an offence under this Act and shall be liable, on conviction, to a fine (*multa*) not exceeding twenty-five thousand euro (€25,000) or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

(4) Any person who assaults or obstructs or impedes any officer, employee or agent of an undertaking in the exercise of his duties with such undertaking shall be guilty of an offence under this Act, and shall on conviction be liable to a fine (*multa*) not exceeding fifteen thousand euro (€15,000) or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment.

(5) Any person who, without being duly authorised at law, uses any apparatus for the purpose of deliberately interfering with radiocommunications shall be guilty of an offence under this Act and shall on conviction be liable to a fine (*multa*) not exceeding fifty thousand euro (€50,000) and, or to a daily fine (*multa*) not exceeding one thousand euro (€1,000) for each day of non-compliance, and, or to imprisonment for a period not exceeding one year, or to such fine or fines and to such imprisonment.

**49.** Any person who by means of an electronic communications network or apparatus -

- (a) threatens the commission of any crime; or
- (b) with intent to extort money or any other thing, or to make any gain, or with intent to induce another person to do or omit from doing any thing, threatens to accuse or to make a complaint against, or to defame, that or another person; or
- (c) makes any other improper use thereof,

shall be guilty of an offence under this Act and shall, on conviction, be liable to a fine (*multa*) not exceeding twenty five thousand euro (€25,000) and, in the case of a continuing offence, to a further fine (*multa*) not exceeding five hundred euro (€500) for each day during which the offence continues; for each day during

Use of electronic communications apparatus to make threats.  
 Added by:  
 XXX. 2007.33.  
 Re-numbered by:  
 XII. 2010.5;  
 IX. 2011.34.  
 Amended by:  
 XI. 2018.32;  
 LII. 2021.46.

which the offence continues;

Cap. 579.

Provided that mere defamatory words or statements uttered or published on an electronic communications network or apparatus and which may give rise to an action for defamation or slander in terms of the [Media and Defamation Act](#), shall not constitute an offence under this Act.

Power of Minister to make regulations in relation to criminal offences.

*Added by:*

*VII. 2004.23.*

*Amended by:*

*L.N. 425 of 2007.*

*Re-numbered by:*

*XII. 2010.5;*

*IX. 2011.34.*

*Amended by:*

*LII. 2021.47.*

**50.** Without prejudice to any other provision of this Act the Minister may, after consultation with the Authority, make regulations prescribing penalties for criminal offences against any regulations made under this Act, and such regulations may:

- (a) prescribe different fines (*multi*) for different offences;
- (b) prescribe fines (*multi*) calculated in accordance with the duration of the commission of the offence:

Provided that any such regulations as may be made shall not provide for a fine (*multa*) of more than twenty-five thousand euro (€25,000) and, or five hundred euro (€500) for each day during which the offence continues.

Proceedings for a criminal offence.

*Added by:*

*VII. 2004.23.*

*Amended by:*

*XXX. 2007.34.*

*Re-numbered by:*

*XII. 2010.5.*

*Amended by:*

*IX. 2011.37;*

*VIII. 2014.45.*

*Cap. 9.*

**51.** (1) No proceedings for any criminal offence under this Act other than offences under article 25, under article 48(1)(d) or under article 49 shall be instituted without the consent of the Authority or at its request.

(2) Notwithstanding anything contained in the [Criminal Code](#), an appeal to the court of competent jurisdiction shall lie with the prosecution against any judgement delivered in any proceedings with respect to an offence under this Act.

## PART VIII

### SAVING, TRANSITORY AND EXEMPTIONS

Saving.

*Substituted by:*

*LII. 2021.48.*

**52.**(1) Any regulations made or kept in force by or under any of the provisions of this Act as in force on the 21st December, 2020 and still in force on the said date shall, until other provision is made under or by virtue of this Act, continue to be in force and have effect.

(2) Any directives, decisions or designations however so described made by the Authority under this Act as in force on the 21st December, 2020 and still in force on the said date shall continue to be in force until revoked or amended by the Authority.

- 53.** *(Deleted by Act LII.2021.50).*
- Review of former obligations for access and interconnection.  
*Added by:*  
*VII. 2004.27.*  
*Re-numbered by:*  
*XII. 2010.5;*  
*IX. 2011.39.*  
 S.L. 399.09  
 S.L. 399.10  
 S.L. 399.14  
 S.L. 399.24  
 S.L. 399.26  
 S.L. 399.27
- 54.** *(Deleted by Act LII.2021.50)*
- Existing authorisations.  
*Amended by:*  
*XIX. 1998.3;*  
*XVIII. 2000.31;*  
*VII. 2004.25, 26.*  
*Re-numbered by:*  
*XII. 2010.5.*  
*Substituted by:*  
*IX. 2011.40.*
- 55.** (1) The Prime Minister may by order published in the Gazette exempt from any of the provisions of this Act, any electronic communications network and, or service, or any radiocommunications apparatus exclusively used by the State for activities concerning public security, defence, State security, including the economic well-being of the State in the case of activities pertaining to State security matters, and the activities of the State in the area of criminal law:
- Exemption from the provisions of this Act.  
*Substituted by:*  
*LII. 2021.50.*
- Provided that no exemptions shall be granted with respect to:
- (a) the requirement of having an explicit authorisation issued by the Authority for the rights of use for radio spectrum; or
  - (b) the installation or use of radiocommunications apparatus capable of causing deliberate interference, as provided for in article 31A.
- (2) The Prime Minister shall, in making an order under this article, first consult with the Authority, and may after having done so, impose any such conditions as he may consider appropriate in the circumstances.
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