



Please insert a member picture here

Expert name: Sarah Cannataci
Expert position: Associate

Expert presentation

Brief intro of the Expert...

Sarah is an Associate at Fenech & Fenech Advocates working with the firm's Technology, Media and Telecoms Law (TMT) department. She started practicing in data protection, privacy and intellectual property in 2014 and joined the International Practice department at Fenech & Fenech Advocates in 2017.

PrivacyRules Country Overview: Privacy and Data Protection in [Country]

Contact details:

Email:

sarah.cannataci@fenechlaw.com

Phone number: +356 21241232

Cell phone: N/A

Fax:

[**SCOPE:** The scope of the Country Overview template is to confirm to clients the quality and accuracy of the expertise that PrivacyRules and its Members can provide. It is an informative document, yet does not constitute advise or give direction on the design of privacy policies in each given jurisdiction]

[**COMPILATION:** Simple yes / no answer, brief explanation (limited to max 5 lines per answer) with indication of title and year of adoption when referring to laws / bills / regulations / guidelines, list the latest one first. This information will be reproduced on the PrivacyRules webpage under "The law of privacy"]

Q: Are privacy and data protection recognised by the Constitution / Fundamental Rights Bill?

A: YES, Article 32 of the Constitution of Malta guarantees the individual's fundamental right and freedom to respect for his private and family life.

Q: Is there primary legislation on privacy, data protection, cybersecurity, cybercrime, cyberterrorism?

A: YES, the main national legislative document regulating personal data protection is Data Protection Act, Chapter 586 of the Laws of Malta, which came into force on 28th May 2018 and repealed the previous Data Protection Act, Chapter 440 of the Laws of Malta. Subsidiary legislation regulating specific issues and matters are issued under the Act by way of Regulations.

Q: What are the fields of law closely related to privacy and data protection that are regulated in the [Maltese] jurisdiction? (e.g. e-commerce, telecommunications, media, intellectual property, etc.).

A: Electronic communications, virtual financial assets, electronic commerce, telework, gaming, media, orphan works, freedom of information, intellectual property, amongst others.



Headquarters:
3491 Forestoak Court
Cincinnati, Ohio 45208, United States of America
Website: www.privacyrules.com
Email: info@privacyrules.com
PrivacyRules© - All rights reserved 2016-2021

Q: What are the key definitions in the field of data protection (e.g. Personal Data, Sensitive Data, Data Processing, Data Controller, Data Subject, Pseudonymised Data, Anonymised Data, Processing or any other definition)?

A: Malta is member of the European Union and thus Regulation [EU] 2016/679 is directly applicable and enforceable in Malta. The definitions as set out in Article 4 of Regulation [EU] 2016/679 apply to the Data Protection Act, Chapter 586 of the Laws of Malta.

Q: In particular, is there a distinction between identifiable, pseudonymised and anonymised data and if so, how are they regulated?

A: Malta is member of the European Union and thus Regulation [EU] 2016/679 is directly applicable and enforceable in Malta. The definitions as set out in Article 4 of Regulation [EU] 2016/679 apply to the Data Protection Act, Chapter 586 of the Laws of Malta.

Q: Is there a national Data Protection Authority?

A: YES, the supervisory authority is the Information and Data Protection Commissioner and is established under the Data Protection Act, Chapter 586 of the Laws of Malta.

Q: Which national judicial authorities are competent on privacy and data protection related matters?

A: The Information and Data Protection Appeals Tribunal is established under the Data Protection Act, Chapter 586 of the Laws of Malta, to hear appeals from decision of the Information and Data Protection Commissioner in its role as Supervisory Authority. Any party to the appeal may appeal from the decision of the Tribunal to the Court of Appeal on a point of law. Separately, data subjects may institute an action for effective judicial remedy, as well as action for damages (including moral damages), against a data controller or processor, before the First Hall of the Civil Court.



Headquarters:
3491 Forestoak Court
Cincinnati, Ohio 45208, United States of America
Website: www.privacyrules.com
Email: info@privacyrules.com
PrivacyRules© - All rights reserved 2016-2021

Q: Is there a one-stop-shop mechanism in place?

A: YES, since Malta is subject to Regulation [EU] 2016/679 (the 'GDPR'), the one stop shop mechanism for a single lead supervisory authority applies in the case of an organisation engaged in cross-border processing.

Q: What are the main enforcement measures?

A: As per the GDPR, data subjects have the right to lodge complaints before the IDPC, as well as the right to an effective judicial remedy before the Civil Courts. In addition, the IDPC has the power to issue warnings, reprimands as well as to impose a temporary or definitive limitation (including a ban) on processing. The IDPC can also issue administrative fines, and in specific cases, non-compliance may also result in imprisonment. Where administrative fines are imposed by the IDPC, these shall be due as a civil debt, allowing the IDPC to take civil action to recover this debt.

Q: What are the actual main sanctions?

A: Without prejudice to Art. 83 of the GDPR, the IDPC may impose administrative fines, with specific rules where such fines are imposed on public authorities or bodies. In addition, the Data Protection Act, Chapter 586 of the Laws of Malta stipulates that any person who(a) knowingly provides false information to the IDPC when so requested; or (b) does not comply with any lawful request pursuant to an investigation by the IDPC, shall be guilty of an offence and shall, upon conviction, be liable to a fine (multa) of not less than one thousand, two hundred and fifty euro (€1,250) and not more than fifty thousand euro (€50,000) or to imprisonment for six months or to both such fine (multa) and imprisonment.

Q: Is there a supra-national applicable legal framework? If the answer is positive, is it binding and to what extent?



Headquarters:
3491 Forestoak Court
Cincinnati, Ohio 45208, United States of America
Website: www.privacyrules.com
Email: info@privacyrules.com
PrivacyRules© - All rights reserved 2016-2021

A: Malta is a member of the European Union and therefore is subject to Regulation [EU]2016/679, as well as many other various EU directives which have been transposed and implemented into local legislation. Maltese legislation is also in conformity with the Convention of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS NO 108) which was ratified by Malta in February 2003. In addition, by virtue of the European Convention Act (Chapter.319 of the Laws of Malta), the European Convention on Human Rights, including the protection afforded in respect of the right to privacy (Art.8), has been transposed into domestic Maltese law and directly enforceable in front of the Maltese courts.

Q: Does any foreign authority have jurisdiction on privacy and data protection matters for citizens of [Malta]? If the answer is positive, do they have executive or advisory authority?

A: The European Data Protection Board (EDPB) is empowered by the Regulation [EU] 2016/679 to make binding decisions towards national supervisory authorities to ensure consistent application of the GDPR. In addition, other competent authorities, such as the Court of Justice of the European Union, may also have competence to decide on certain matters further to supranational legal framework and powers.

Q: Are there e-discovery or disclosure duties pursuant to a request from a foreign Law Enforcement Agency?

A: The processing of personal data by competent authorities is regulated by the local transposition of Directive 2016/680, that is, the Data Protection (Processing of Personal Data by Competent Authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties) Regulations, Subsidiary Legislation 586.08 of the Laws of Malta.

Q: Are privacy-by-design and privacy-by-default mandatory?



Headquarters:
3491 Forestoak Court
Cincinnati, Ohio 45208, United States of America
Website: www.privacyrules.com
Email: info@privacyrules.com
PrivacyRules© - All rights reserved 2016-2021

A: The concepts of privacy-by-design and privacy-by-default are to be implemented as set out in Article 25 of Regulation [EU] 2016/679 . The Data Protection Act, Chapter 586 of the Laws of Malta, does cater for an exception to this rule where the personal data is processed for the purpose of exercising the right to freedom of expression and information, including processing for journalistic purposes or for the purposes of academic, artistic or literary expression.

Q: Are data protection officers (DPOs) foreseen by law and if so, to what extent?

A: Yes, as set out in Regulation [EU] 2016/679, data protection officers have specific roles, tasks and duties, and the designation of the same is mandatory in specific processing operations.

Q: Are data protection impact assessments (DPIAs) mandatory and if so, to what extent?

A: Yes, as set out in Regulation [EU] 2016/679, the undertaking of data protection impact assessments (DPIAs) and the undertaking of the same is mandatory where the processing operation includes: (a) a systematic and extensive evaluation of personal aspects relating to natural persons which is based on automated processing, including profiling, and on which decisions are based that produce legal effects concerning the natural person or similarly significantly affect the natural person; (b) processing on a large scale of special categories of data referred, or of personal data relating to criminal convictions and offences; or (c) a systematic monitoring of a publicly accessible area on a large scale.

Q: Is there any obligation to register databases and if so, to what extent?

A: NO



Headquarters:
3491 Forestoak Court
Cincinnati, Ohio 45208, United States of America
Website: www.privacyrules.com
Email: info@privacyrules.com
PrivacyRules© - All rights reserved 2016-2021

Q: Are definitions like controller, processor, regulator clearly defined and identifiable within the [Malta] regulatory framework?

A: YES.

Q: Are there obligations to adopt reasonable technical, physical and organizational measures to protect the security of sensitive personal information and if so, to what extent?

A: YES, even in cases where specific processing operations allow for certain derogations from the general obligations, the Data Protection Act, Chapter 586 of the Laws of Malta specifically stipulates that appropriate safeguards for the rights and freedoms of the data subject, including pseudonymisation and other technical and organisational measures to ensure respect for the principle of data minimisation should be applied.

Q: Are there security breach notification requirements and if so, to what extent?

A: YES, in line with the provisions of Regulation [EU] 2016/679, unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons, the controller is obliged to notify the IDPC no later than 72 hours from becoming aware of a personal data breach. When the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall communicate the personal data breach to the data subject without undue delay

Q: Can authorities access large amounts of data and/or specific data without a court or prosecutor's order?

A: NO, authorities are also subject to the provision of the Regulation [EU] 2016/679. Law enforcement agencies are specifically regulated under the



Headquarters:
3491 Forestoak Court
Cincinnati, Ohio 45208, United States of America
Website: www.privacyrules.com
Email: info@privacyrules.com
PrivacyRules© - All rights reserved 2016-2021

Data Protection (Processing of Personal Data by Competent Authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties) Regulations, Subsidiary Legislation 586.08 of the Laws of Malta.

Q: Are there specific kinds of data covered by stronger provisions on legal protection (e.g. children data, etc.)?

A: YES, a higher level of protection is afforded to special categories of personal data and data relating to criminal offences, however further to this, specific subsidiary legislation exists to cater for processing of protection of minors and also in relation to the processing of children's data in relation to the offer of information society services.

Q: Is there a specific regulation for the collection of data?

A:

Q: Is it possible to use personal data for electronic marketing purposes and if so, to what extent?

A: YES, besides the rules on electronic marketing purposes as regulated by Regulation [EU] 2016/679 and the local legislation also exists which transposes and implements the provisions of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector.

Q: Is transfer of data outside the [Country] jurisdiction regulated?

A: YES, transfers of data outside the Maltese jurisdiction are regulated in accordance with the relevant provisions of Regulation [EU] 2016]679 on third



Headquarters:
3491 Forestoak Court
Cincinnati, Ohio 45208, United States of America
Website: www.privacyrules.com
Email: info@privacyrules.com
PrivacyRules© - All rights reserved 2016-2021

country transfers. The local transposition of Directive 2016/680 also includes specific rules on transfer of data in the law enforcement sector.

Q: Can individuals access their data and request their correction or deletion?

A: YES

Q: How can individuals exercise their privacy rights?

A: Controllers at law obliged to allow modalities to cater for the exercise of the rights of data subjects. In addition, data subjects also have the right to complain to the IDPC where their exercise of rights under the GDPR is not fulfilled or handled in accordance with law.

Q: Are there associations entitled to advocate privacy and data protection rights?

A: NO.

Q: Is access to data regulated according to specific and detailed legal acts stating legal requirements to exercise the right to access, e.g. timeframe, identity and categories of legitimate applicant, templates for various forms of request, obligations of the requested entity etc.?

A: NO, other than the provisions set out in the GDPR, not other legal requirements exist that regulate the right of access.

Miscellaneous: Any other information particularly important in the [Country] jurisdiction [if necessary, please explain why this additional information is provided and which is its relevance].



Headquarters:
3491 Forestoak Court
Cincinnati, Ohio 45208, United States of America
Website: www.privacyrules.com
Email: info@privacyrules.com
PrivacyRules© - All rights reserved 2016-2021

A:



Headquarters:
3491 Forestoak Court
Cincinnati, Ohio 45208, United States of America
Website: www.privacyrules.com
Email: info@privacyrules.com
PrivacyRules© - All rights reserved 2016-2021