

2 September 2020

## Circular on the implications of Member State's rights under Directive 2000/31/EC as a result of the United Kingdom withdrawing from the European Union

### 1.0 Introduction

Directive 2000/31/EC of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the internal market, hereinafter referred to as the "Directive on Electronic Commerce", covers a wide range of activities which may take place online. It applies to services provided without the parties being present together at the time the goods are supplied, or in the case of services, at the time when the services are provided. The objective of the Directive on Electronic Commerce is to create a legal framework to ensure the free movement of information society services between Member States. Information society services are services normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services. These activities can in particular consist of selling services which give rise to on-line contracting but also, in so far as they represent an economic activity. Information society services also extend to services which are not remunerated by those who receive them, such as those offering on-line information. This Circular applies to Licence holders who provide information society services within the meaning of the Directive on Electronic Commerce.

### 2.0 Article 4 of Directive on 2000/31/EC on Electronic Commerce

The *Principle excluding prior authorization* laid down in Article 4 of the said Directive, allows Member States to ensure that the taking up and pursuit of the activity of an information society service provider is not subjected to prior authorisation or any other requirement resulting in a similar effect.

In view of the United Kingdom (UK) withdrawing from the European Union, the provisions of this Directive can no longer be enforced in the UK. The MFSA understands that Brexit date was the 31st January 2020, furthermore, a transitional period until the 31st December 2020 has been granted.

As a result of the above, the MFSA would like to draw the attention of licence holders which offer online services to the United Kingdom that once the transitional period elapses, they can no longer continue operating in line with the provisions of this Directive. Licence holders which would like to continue accessing the UK market via this route following the UK's withdrawal from the EU, are required to immediately contact the Financial Conduct Authority (FCA) and seek authorisation to continue to carry on new business in the UK in this manner. Where licence holders require an authorisation, such licence holders should be aware of the timing and other implications of applying for permission. Licence holders will need to be aware of changes to the relevant financial promotions rules, which may impact their marketing. Furthermore, licence holders are requested to keep the MFSA in copy in any correspondence with the FCA in this regard.

### 3.0 Contacts

Any queries or requests for clarifications in respect of the above should be sent by email on [ipsu@mfsa.mt](mailto:ipsu@mfsa.mt).