



GOVERNMENT OF MALTA

Government response to the Consultation on an Act to amend the Consumer Affairs Act, Cap. 378 and other Laws, and to make ancillary and consequential provisions thereto.

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Insert the Ministry's title Ministry for Tourism and Consumer Protection
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Executive Summary

Introduction and overview

1. A brief introduction about the subject.

The purpose of this amendment process that mainly but not exclusively concerns the Consumer Affairs Act, is to:

- implement Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 (hereinafter referred to as the EU Regulation); and
- make ancillary and consequential provisions thereto.

Article 42 of the EU Regulation establishes that the Regulation “shall be binding in its entirety and directly applicable in all Member States.”

This regulation repeals Regulation (EC) No 2006/2004, which regulation already provides for harmonised rules and procedures to facilitate cooperation between the national authorities that are responsible for the enforcement of cross-border consumer protection laws however more rapid, agile and consistent enforcement of consumer rules was deemed necessary and new measures have been introduced in Regulation 2017/2394 to address, in a more effective manner, enforcement in cases of cross-border infringements, including infringements in the digital environment.

The EU Regulation lays down the conditions under which national authorities responsible for the enforcement of consumer protection laws, cooperate and coordinate actions with each other and with the Commission, in order to enforce compliance with those laws and to ensure the smooth functioning of the internal market, and in order to enhance the protection of consumers’ economic interests.

To implement the EU Regulation, the proposed Bill provides amendments to:

- the Consumer Affairs Act (Cap. 378), that include:
 - the introduction of “commitments procedure” instead of the present reference to “undertakings”. This aligns the terminology with the enforcement powers in sub-articles 4(b) and (c) of Article 9 of the EU Regulation. The judicial process linked to commitments is also introduced by means of these amendments, which process establishes that:

at any stage of an investigation or any stage of judicial proceedings, the Director General (Consumer Affairs) may seek to obtain or to accept commitments from the person concerned to cease the alleged infringement within the time limit set by the Director General, including also on the initiative of the person concerned, additional remedial commitments for the benefit of consumers that have been affected by the alleged infringement;

the Director General together with the person concerned, shall have the right to demand that the investigation or the judicial proceedings, as the case may be, are terminated by means of this procedure which includes the imposition of a penalty by the Civil Court (Commercial Section);

the Director General shall reward the person concerned for the commitments, by reducing between ten to thirty-five percent the amount of the penalty requested to be imposed by the Civil Court (Commercial Section);

the commitments submissions which are to be included in the joint application, shall contain a voluntary statement by the person concerned, that is to include, among other information, his waiver of his right to appeal or challenge in any way the commitments procedure and or the judgement of the Civil Court (Commercial Section) including the penalty;

the termination of the investigation or of the judicial proceedings as the case may be, shall be granted by virtue of a judgement delivered by the Civil Court (Commercial Section);

the Civil Court (Commercial Section) shall reopen the proceedings upon a sworn application by the Director General only where:

- there has been a material change in any of the facts on which the judgment was based; or
 - the person concerned acted contrary to its commitments; or
 - the judgment was based on incomplete, incorrect, or misleading information provided by the concerned person;
- the additions in the requests that the Director General (Consumer Affairs) may include in the sworn application, when judicial proceedings are filed following a prima facie finding of infringement, namely requests: “(i) to remove content or to restrict access to an online interface or to order the explicit display of a warning to consumers when they access an online interface; (ii) to order a hosting service provider to remove, disable or restrict access to an online interface; or (iii) to order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it;” with regard to the enforcement powers in paragraph 4(g) of Article 9 of the EU Regulation;
 - the addition of new orders that may be issued by the Civil Court (Commercial Section) that basically reflect the same new above-mentioned requests;
 - the introduction of the Director General’s new obligation to publish the decisions delivered by the Civil Court (Commercial Section) on the website of the Malta Competition and Consumer Affairs Authority relative to paragraph 7 of Article 9 of the EU Regulation; and
 - the updating of the Director General’s power of entry of inspection, including the addition of the power to purchase goods or services as test purchases, where necessary, under a cover identity and the updating of the power to obtain information with regard to the investigation powers in paragraph 3 of Article 9 of the EU Regulation;

- the Malta Competition and Consumer Affairs Authority Act (Cap. 510) that include:
 - the amendment of the provision relative to the identification and protection of confidential information to ensure that both the “the addressee of an invitation by the Director General to engage in commitments discussions under article 12A of the Consumer Affairs Act“ and “any person including a qualified entity making a reasonable allegation in writing according to article 12(1) of the Consumer Affairs Act.” are included in the list relative to article 29;
 - the update of the transitory provision relative to the Consumer Affairs Act in view of the replacement of the undertaking process by the new commitments procedure; and
 - the amendment of the Third Schedule to the Consumer Affairs Act that is related to article 18 thereof, and that contains the list of EU Legislative Acts for the purpose of which the Office for Consumer Affairs is the National Competent Authority.
- In addition to the above, the following additional amendments are being proposed:
 - In the Consumer Affairs Act:
 - the update of the procedure relative to an application by the Director General (Consumer Affairs) for the issue by the Civil Court (Commercial Section) of interim measures, that may be filed also at any stage of the judicial proceedings in addition to during any stage of the investigation process, to serve as a means, if acceded to by the Civil Court (Commercial Section) so that the person concerned remedies the situation in cases of urgency due to the risk of immediate and serious harm to the collective interests of consumers, even during the judicial process; and
 - the increase of the value of the claims that may be filed before the Consumer Claims Tribunal from €3500 to €5000. This increase is necessary so that it is aligned to the one relative to the Small Claims Tribunal;
 - In the Consumer Claims Tribunal Rules (S.L.378.01) consequential amendments have been introduced in connection with the increase in the value of the claims, as well as updates in the fees payable with regard to the filing of such claims in the Registry of the Consumer Claims Tribunal.
 - In the Credit Agreements for Consumers relating to Immovable Residential Property Regulations (S.L.378.10), the European Banking Authority Guidelines on the Requirements regarding Arrears and Foreclosure (EBA/GL/2015/12) have been included.
 - In the Code of Organization and Civil Procedure (Cap. 12) the fees payable to the Registry of the Superior Courts of Malta with regard to the judicial acts filed by the Director General (Consumer Affairs) during the judicial proceedings before the Civil Court (Commercial Section) has been amended.

2. The public consultation date.

Include the objective and purpose of the public consultation.

On the 22nd April, 2020 the Government published a consultation with regard to an Act to amend the Consumer Affairs Act, Cap. 378 and other Laws, and to make ancillary and consequential provisions thereto, with the objective and purpose to:

- implement Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 (hereinafter referred to as the EU Regulation); and
- make ancillary and consequential provisions thereto.

3. This consultation sought views on:

- The implementation Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004, and to introduce ancillary, necessary and consequential amendments in the Consumer Affairs Act, Cap. 378 and in other Laws.
- Amendments with regard to ancillary and consequential provisions relative to the above-mentioned legislations and related ones.

Responses to the consultation and process used to seek stakeholder views

This document is the Government Response to this consultation and sets out the Government's decisions on these matters.

4. The closing date of the public consultation. Which methods were used to receive the feedback. The total amount of responses. From whom you received the feedback.

The consultation closed on the 12th May, 2020. The consultation document and the reply form were available online and responses were accepted electronically and on paper. In total, there were 2 responses. Responses were from a consumers' association and from a law firm.

A list of respondents can be found at Annex A.

5. Include (if any) meetings with stakeholders and list who the stakeholders were.

No meetings were held during the consultation period.

Summary of responses and decisions

The following is a summary of the consultation responses received. We would like to thank all those who took the time to respond to the consultation and participate in stakeholder meetings around the consultation exercise.

6. Statistics.

- Total feedback received: 2
- Total feedback received by individuals: 0
- Total feedback received by organisations: 1
- Total feedback received through email: 2
- Total feedback received through online form: 0
- Total feedback received by post: 0

7. Summary of feedback received.

The responses provided a balanced outcome with 50% positive responses, 35% in disagreement and 15% updating proposals.

8. Your assessment and the Government's decision (list the Government's decisions).

Having reviewed the responses, our updated assessment indicates that a number of amendments may have to be included. In view of this and the evidence and opinions from the consultation exercise, the Government has decided to introduce amendments that include:

- the updating of the professional secrecy and confidentiality aspects in the relevant provisions;
- the updating of procedural safe guards during specific inspection processes, as may be necessary, with regard to investigations;
- the inclusion of an amending provision in Article 12C of the Consumer Affairs Act with regard to access to the file of the investigation without prejudice to the non-disclosure of information or documents containing business secrets or other confidential information or internal documents;
- the updating of the transitory provision.

Implementation

9. When you intend to implement the decisions

The Bill will be reviewed as soon as possible prior to the Parliamentary process.

Contact Details

If you have any questions regarding this response, please contact:
publicconsultation.mccaa@mccaa.org.mt

Annex A: List of respondents

Organisation
Association for Consumer Rights (Malta)
Mamo TCV Advocates