



GOVERNMENT OF MALTA

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Government response to the Consultation on the proposed Bill entitled “An Act to amend the Consumer Affairs Act, Cap. 378” – transposition of the Omnibus Directive (EU) 2019/2161

*22 February, 2022*

*Ministry for Tourism and Consumer Protection  
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# Executive Summary

## Introduction and overview

### 1. A brief introduction about the subject.

The proposed Bill entitled “An Act to amend the Consumer Affairs Act, Cap. 378.” (the Consumer Affairs (Amendment No. 2) Act, 2021”, hereinafter referred to as the proposed Bill, is intended to transpose and to implement Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules, namely the [Omnibus Directive](#); and to introduce necessary and consequential amendments with regard to subsidiary legislation made under the Consumer Affairs Act, hereinafter referred to as the Act.

The Omnibus Directive amends the Unfair Contract Terms Directive 93/13/EEC, the Price Indications Directive 98/6/EC, the Unfair Commercial Practices Directive 2005/29/EC and the Consumer Rights Directive 2011/83/EU.

Part I of the proposed Bill introduces amendments to the Act, and Part II amends the subsidiary legislation made under the Act.

Part I includes amendments to the provisions in article 106A of the Act with regards to ‘Penalties’ that may be imposed by the Civil Court, and establishes that when fines are to be imposed in accordance with Article 21 of the [Consumer Protection Co-operation Regulation](#), the maximum amount of such fines shall be at least 4% of the trader’s annual turnover in the Member State or Member States concerned, provided that where such information is not available the maximum amount of the fine shall be at least €2 million.

Furthermore, the provisions relative to Part VIII on “Unfair Commercial Practices and illicit schemes” is being amended to include and update the definition of ‘product’ to also include digital products and digital services; and the inclusion of the new definitions “online marketplace” and “ranking”.

A new provision is added in article 51C relative to misleading actions with regard to dual quality of goods.

In article 51D(3) relative to misleading omissions and material information, paragraph (d) is being amended to remove the requirement to have the complaint handling policy. A new paragraph (f) is being added, which paragraph establishes that with regard to products offered on online marketplaces, the information on whether the third party offering the products is a trader or not, on the basis of the declaration of that third party to the provider of the online marketplace, is to be considered as material information.

A new sub-article (3A) is also being added to article 51D wherein this sub-article establishes provisions relative to ranking of commercial offers within online search results. Furthermore, a new sub-article (5) is added with regard to consumer reviews of products and the information to be provided by the trader.

In the First Schedule of the Act, that enlists those commercial practices that are in all circumstances regarded as unfair, four new paragraphs are added as paragraphs 11A, 23A, 23B and 23C.

In order to transpose and implement Article 3 of the Directive relative to redress for consumers harmed by unfair commercial practices, in article 21 of the Act on the determination of disputes before the Consumer Claims Tribunal, a new proviso is being introduced to ensure that when determining issues in disputes that concern harm suffered by consumers resulting from unfair commercial practices, the Consumer Claims Tribunal shall order proportionate and effective remedies.

Part II of the proposed Bill establishes the consequential amendments with regard to the subsidiary legislation made under the Act, namely the Consumer Affairs Act (Price Indication) Regulations (Subsidiary Legislation (S.L.) 378.09) and the Consumer Rights Regulations (Subsidiary Legislation 378.17) to transpose and implement the relevant Directive's provisions.

With regard to the S.L.378.09, a new regulation 5A to address 'price reductions' is being added to fully transpose the Directive. This new regulation establishes that announcements of a price reduction shall indicate the prior price applied by the trader during a period of time not shorter than 30 days prior to the application of the price reduction. The proposed Bill also includes three provisos which provide for different rules for products which deteriorate quickly, and to establish other rules for products which have been on the market for less than 30 days, and where the price reduction is progressively increased.

Other amendments to S.L.378.09 are in regulation 9 relative to offences. The first amendment refers to the commencement of proceedings, whilst the second amendment refers to minimum and maximum amounts of fines for the first, and second and subsequent convictions; and the deletion of the suspension of any licence or other authorization. Another amendment refers to the publication of the Court's judgement. Additionally, and in line with the Directive, a list of non-exhaustive and indicative criteria is being included, which is to be taken into account by the Court when imposing a fine.

As to S.L.378.17, a number of new definitions which are already defined in the Digital Content Directive have been included, to reflect the extension of the scope of the Consumer Rights Regulations to cover contracts under which the trader supplies or undertakes to supply digital content or a digital service to the consumer.

The applicability provisions of these Regulations are also being updated to reflect the extension of the scope, and in regulations 4 and 5 relative to information requirements, respectively for contracts other than distance or off-premises contracts and for distance and off-premises contracts, a number of provisions are being updated to reflect the inclusion of digital contracts and digital services. A new regulation 5A with regards to additional specific information requirements for contracts concluded on online marketplaces is being added.

Regulations 8 and 9, respectively regarding off-premises and distance contracts, are being updated to clarify that other than the consumer's express request on a durable medium as in the current regulation, the consumer has to also acknowledge that once the contract has been fully performed by the trader, the consumer will no longer have the right of withdrawal.

The proposed Bill includes the extension of the withdrawal period of 14 days to 30 days for contracts concluded in the context of unsolicited visits by a trader to a consumer's home or excursions organised by a trader with the aim or effect of promoting or selling products to consumers. Such update is reflected in regulations 10, 12, 16 and 18.

In regulation 15 relative to the obligations of the trader in the event of withdrawal, new sub-regulations are added to cover contracts under which the trader supplies or undertakes to supply digital content which is not supplied on a tangible medium or a digital service to the consumer, and the consumer provides or undertakes to provide personal data to the trader instead of paying a price. Regulation 16 relative to the consumer's obligations in the event of withdrawal are also being updated. Furthermore, regulation 18 on the exceptions from the right of withdrawal are also being amended for clarification purposes.

2. The public consultation date.

Include the objective and purpose of the public consultation.

On the 7th December 2021 the Government published a consultation with regard to the Bill entitled "An Act to amend the Consumer Affairs Act, Cap. 378":

- to transpose and implement the Omnibus Directive (EU) 2019/2161); and
- to make ancillary and consequential provisions thereto.

3. This consultation sought views on:

- the transposition and the implementation of Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules, namely the Omnibus Directive; and
- the 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 process closed on the 10th January, 2022. The consultation document and the reply form were available online and responses were accepted electronically and on paper. In total, there was one response. The response was from a consumers' association.

The respondent is indicated in 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: 1
- Total feedback received by individuals: 0
- Total feedback received by organisations: 1
- Total feedback received through email: 1
- Total feedback received through online form: 0
- Total feedback received by post: 0

7. Summary of feedback received.

The respondent provided a 95% favourable response.

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

Having reviewed the response, the following update will be considered, namely that the non-exhaustive and indicative criteria for the establishment of the final penalty to be imposed by the Civil Court (Commercial Section) on any infringement of the Consumer Affairs Act or any Regulations made thereunder shall, where applicable, be taken into consideration, unless a different criteria is prescribed in the specific Regulations.

Moreover, following the respondent's submission regarding the simplification of the legal provisions, the user guidelines that will be issued in terms of Cap. 512 will be providing the necessary explanation of the legal provisions.

## 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](mailto:publicconsultation.mccaa@mccaa.org.mt)

## Annex A: List of respondents

<b>Organisation</b>
The Consumers' Association - Malta