

A Bill

Entitled

An Act to provide for representative actions for the protection of the collective interests of consumers, and to carry out other consequential amendments.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title, scope and commencement.

1. (1) The short title of this Act is the Representative Actions (Consumers) Act, 2022.

(2) The scope of this Act is to transpose Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC, and to carry out other consequential amendments.

(3) This Act shall come into force on 25 June 2023.

PART I

TRANSPOSITION OF THE REPRESENTATIVE ACTION DIRECTIVE

Title I

Purpose, Applicability and Interpretation

Purpose.

2. The provisions of this Act shall not constitute grounds for the reduction of consumer protection within the scope of the legal acts listed in Schedule to this Act.

Applicability.

3. This Act applies to :

- (a) representative actions brought before the Civil Court and, or before a national administrative authority against infringements by traders of the provisions of European Union law referred to in the Schedule including such provisions as transposed into Maltese law, that harm or may harm the collective interests of consumers; and
- (b) domestic and cross-border infringements, including where those infringements ceased before the representative action was brought or where those infringements ceased before the representative action was concluded:

Provided that this Act does not affect rules under European Union or national law establishing contractual and non-contractual remedies available to consumers for the infringements referred to in this article:

Provided further that this Act is without prejudice to the provisions of European Union law referred to in the Schedule:

Provided further that the provisions of this Act shall be without prejudice to European Union rules on private international law, in particular rules regarding jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and rules on the law applicable to contractual and non-contractual obligations.

Interpretation.

4. For the purpose of this Act, the following definitions shall apply:

“Act” means the Representative Actions (Consumers) Act;

“collective interests of consumers” means the general interest of consumers and, in particular for the purposes of redress measures, the interests of a group of consumers;

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“competent authority” means the Consumer Affairs Council as established under Part II of the Consumer Affairs Act;

“consumer” means any natural person who acts for purposes which are outside that person’s trade, business, craft, or profession;

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“Civil Court” means the Civil Court (Commercial Section) established by article 3 of the Civil Courts (Establishment of Sections) Order;

“cross-border representative action” means a representative action brought by a qualified entity in a Member State other than that in which the qualified entity was designated;

“defendant” means the trader against whom a representative action is brought;

“domestic representative action” means a representative action brought by a qualified entity designated in Malta;

“final decision” means a decision by a court or administrative authority of a Member State that cannot or can no longer be reviewed by ordinary means of appeal;

“injunctive measure” includes any measure, however so described, the purpose of which is to ensure compliance with any of the European Union laws listed in the Schedule;

“Minister” means the Minister responsible for consumer affairs;

“national administrative authority” means any national public authority however so described as established by law;

“plaintiff” means the qualified entity which files a representative action in the Civil Court and, or before a national administrative authority;

“practice” means any act or omission by a trader;

“qualified entity” means any organisation or public body representing consumers’ interests which has been designated by a Member State as qualified to bring representative actions in accordance with the provisions of this Act;

“redress measure” means a measure that requires a trader to provide consumers concerned with remedies such as compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid, as appropriate and as available under European Union or national law;

“representative action” means an action for the protection of the collective interests of consumers that is brought by a qualified entity as a claimant party on behalf of consumers to seek an injunctive measure, a redress measure, or both;

“trader” means any natural person, or any legal person irrespective of whether privately or publicly owned, that acts, including through another person acting in that person’s name or on that person’s behalf, for purposes relating to that person’s trade, business, craft, or profession.

Title II

Representative actions

Qualified entities.

5. (1) Representative actions as provided for by this Act may be brought by qualified entities as designated by the competent authority for this purpose.

(2) Entities, in particular consumer organisations, including consumer organisations which represent members from more than one Member State, shall be eligible to be designated as qualified entities for the purpose of bringing domestic representative actions, cross-border representative actions, or both.

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(3) The competent authority shall designate an entity as referred to in sub-article (2) which has made a request for designation as a qualified entity for the purpose of bringing domestic representative actions or cross-border representative actions, or both, if that entity complies with all of the following criteria:

- (a) it is a legal person that is constituted in accordance with the national law of the Member State of its designation and can demonstrate 12 months of actual public activity in the protection of consumer interests prior to its request for designation;
- (b) its statutory purpose demonstrates that it has a legitimate interest in protecting consumer interests as provided for in the provisions of European Union law referred to in the Schedule;
- (c) it has a non-profit-making character;
- (d) it is not the subject of insolvency proceedings and is not declared insolvent;
- (e) it is independent and not influenced by persons other than consumers, in particular by traders, who have an economic interest in the bringing of any representative action,

including in the event of funding by third parties, and, to that end, has established procedures to prevent such influence as well as to prevent conflicts of interest between itself, its funding providers and the interests of consumers;

- (f) it makes publicly available in plain and intelligible language by any appropriate means, in particular on its website, information that demonstrates that the entity complies with the criteria listed in paragraphs (a) to (e) and information about the sources of its funding in general, its organisational, management and membership structure, its statutory purpose and its activities:

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Provided that, with regard to domestic representative actions, those consumer associations registered according to Part IV of the Consumer Affairs Act shall be designated as qualified entities for the purposes of this Act, upon their request.

(4) The competent authority may designate an entity as a qualified entity on an ad hoc basis for the purpose of bringing a particular domestic representative action, at the request of that entity if it complies with the criteria for designation as a qualified entity as provided for in sub-Article (3).

(5) Notwithstanding sub-article (3), the competent authority may designate public bodies as qualified entities for the purpose of bringing representative actions.

Information and monitoring of qualified entities.

6. (1) The competent authority shall inform the European Commission about the list of the qualified entities designated in advance for the purpose of bringing cross-border representative actions, including the name and statutory purpose of those qualified entities, by 26th December 2023:

Provided that the competent authority shall also inform the Commission whenever there are changes to that list and shall make that list publicly available on its website.

(2) Information about the qualified entities designated in advance for the purpose of bringing domestic representative actions shall be made available to the public by means of a Government Notice in the Government Gazette and the competent authority's website.

(3) The competent authority shall, at least every five years, assess whether qualified entities continue to comply with the criteria listed in Article 5(3). The competent authority shall ensure that the qualified entity loses its status if it no longer complies with one or more of those criteria mentioned under article 5(3).

Bringing of cross-border representative actions.

7. (1) Qualified entities designated in advance in another Member State for the purpose of bringing cross-border representative actions may bring such representative actions before the Civil Court and, or before a national administrative authority as the case may be:

Provided that a qualified entity registered in another Member State shall not be required to appoint an attorney in Malta to appear on its behalf.

(2) Where the alleged infringement of Union law as referred to in Article 3(1) affects or is likely to affect consumers in different Member States, the representative action may be brought before the

court or administrative authority of a Member State by several qualified entities from different Member States in order to protect the collective interests of consumers in different Member States.

(3) The Civil Court and, or the national administrative authority shall accept the list referred to in Article 6(1) as proof of the legal standing of the qualified entity to bring a cross-border representative action, without prejudice to the right of the Civil Court and, or the national administrative authority to examine whether the statutory purpose of the qualified entity justifies its taking action in a specific case.

Representative actions.

8. (1) (a) Representative actions as provided for by this Act may be brought before the Civil Court and, or a national administrative authority in accordance with Article 9(7), by qualified entities designated in accordance with Article 5 by means of a sworn application in accordance with sub-article (10) of this article:

Provided that actions are to be filed in the Civil Court irrespective of the amount of the claim unless brought before a national administrative authority;

- (b) Consumers' interests in representative actions shall be represented by qualified entities and those qualified entities shall have the rights and obligations of a plaintiff in the proceedings. The consumers concerned by a representative action shall be entitled to benefit from the measures referred to in sub-Article (11) of this article;
- (c) Prior to the institution of a representative action, a representative action agreement, subject to the provisions of this Act, shall be entered into between the consumer and the qualified entity whereby the consumer consents to his inclusion in the representative action proceedings and to the appointment of the qualified entity as the plaintiff, and includes the claim of the consumer and may also include the requirement to pay a modest entry fee or similar charge in order to participate in that representative action;

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- (d) The provisions of the Code of Organisation and Civil Procedure, insofar as they are consistent with the provisions of this Act, shall apply to proceedings under this Act including with reference to the written pleadings, unless brought before a national administrative authority.

Duties of qualified entity.

(2) (i) The qualified entity shall act in the best interests of the consumers being represented.

(ii) The qualified entity shall explain to the consumers the nature of the representative action proceedings and shall also keep them informed on the progress of the proceedings including any judgment or decree that is binding on those consumers and, if applicable, on whether the qualified entity shall appeal from the judgement delivered by the Civil Court.

(iii) The qualified entity shall keep and maintain a register to record the identity and claims of those consumers who are part of the representative action proceedings and shall, on request, make such register available to the defendant.

Measures which may be sought.

(3) Qualified entities shall be entitled to seek at least one of the following measures:

- (a) injunctive measures as provided for in article 9;
- (b) redress measures as provided for in article 10.

Contents of sworn application.

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(4) (i) Actions brought in front of the Civil Court are to be brought by a sworn application, and the plaintiff shall therein request the Civil Court to declare that the representative action procedure is the most appropriate procedure in the circumstances.

(ii) The sworn application shall -

- (a) state the name of the plaintiff and his specific representative capacity according to this Act;
- (b) state the name of the defendant;
- (c) state the funding sources of the representative action;
- (d) provide a description of the group of consumers concerned by the representative action;
- (e) describe the common issues for the claims which the plaintiff has brought in the representative action;
- (f) state the claim or claims being requested, the redress measure being sought and if applicable, attach a breakdown of the relative amounts due to the group of consumers;
- (g) provide sufficient evidence that satisfies the criteria required to establish the admissibility by the Civil Court according to sub-articles (6) and (7);
- (h) provide the Civil Court with a representative action agreement in accordance with sub-Article 8(1)(c);
- (i) specify the injunctive measures, if any, as established in Article 9, that are being requested:

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Provided that the provisions of article 156 of the Code of Organization and Civil Procedure shall, where applicable, also apply to the sworn application in representative actions brought in front of the Civil Court;

Provided further that the Civil Court shall order the amendment of the sworn application where other consumers opt-in within the period mentioned in the proviso to sub-article (8) or following the permission of the Civil Court in terms of sub-article (13)(i);

Provided further that where an injunctive measure is being requested the provisions of Article 9 shall apply.

Pre-trial hearing.

(5) The Civil Court shall hold a pre-trial hearing to assess the admissibility of the representative action in accordance with this Act and any other applicable law and shall:

- (a) either issue a decree ordering the continuation of the proceedings together with other orders as it may deem fit or ordering the dismissal of the action:

Provided that an appeal from the decree shall be filed within 10 days from date of delivery of decree, or;

- (b) issue a decree to stay the proceedings if the parties agree, during the hearing, to attempt to settle the lawsuit according to article 12.

Admissibility.

(6) (i) The Civil Court shall decree the proceedings admissible for a representative action when:

- (a) it is satisfied by the plaintiff that the claims in the proceedings are brought on behalf of an identified group of consumers and raise common issues; and
- (b) it is satisfied by the plaintiff that the representative action is the most appropriate means for the fair and efficient resolution of the common issues.

(ii) In determining whether the representative action is the most appropriate means for the fair and efficient resolution of the common issues for the purposes of sub-article (6) (i)(b), the Civil Court shall take into account, amongst other things :

- (a) the benefits of the proposed representative action, and
- (b) the nature of the group of consumers.

Certain matters not to bar issue of admissibility decree.

(7) The Civil Court shall not refuse to decree proceedings as a representative action solely on any of the following grounds:

- (a) the claim requires individual assessment after determination of the common issues;
- (b) the claim relates to separate contracts involving different consumers;
- (c) the amount and nature of the damages sought vary among the different consumers.

Decree ordering the continuation of proceedings.

(8) (i) The Civil Court shall decree the continuation of proceedings if:

- (a) it declares the proceedings as appropriate for representative actions in accordance with sub-article (6); and
- (b) it is satisfied that the claims are pursuant to the laws listed under the Schedule.

(ii) The decree shall include -

- (a) the name and address of the plaintiff;
- (b) the name and address of the defendant;
- (c) a description of the group of consumers;
- (d) the common issues for the claims which the plaintiff has brought in the representative action;
- (e) the claims sought; and
- (f) information on the legal effect of a judgment in the representative action:

Provided that the decree may also contain such conditions as the Civil Court may deem fit and the Civil Court shall order that such decree is to be published in the Gazette and in local English and Maltese newspapers and in any other media if the Civil Court deems it fit, provisionally at the expense of the plaintiff, and shall state that any other consumers who desire to be represented by the qualified entity, may do so within a specified date as determined by the Court, which date may not exceed five months from the date of the decree, by registering their claim with the plaintiff and entering into a representative action agreement in accordance with Article 8(1)(c).

Substitution.

(9) If at any time after the pre-trial stage it appears to the Civil Court that the qualified entity no longer satisfies the criteria mentioned in article 5 or is no longer, for any other reason, in a position to represent the interests of the represented consumers, the Civil Court may, either of its own initiative or on the application of a represented consumer:

- (a) substitute the qualified entity by another qualified entity which satisfies the criteria mentioned in article 5 as the qualified entity; and, or
- (b) make any other order it considers appropriate.

Withdrawal by consumer.

(10) If the consumer no longer wishes to be represented by the qualified entity in the representative action, the consumer shall notify the qualified entity in writing and shall no longer benefit from any remedies obtained through the representative action proceedings. The qualified entity shall inform the Civil Court of any withdrawals by consumers in the group of represented consumers.

Civil Court may determine conduct of proceedings.

(11) The Civil Court, on the application of any of the parties, may issue any decree it considers appropriate with respect to the conduct of representative action proceedings to ensure their fair and expeditious determination and, for this purpose, may impose such terms on the parties as it considers appropriate.

Judgements and decrees.

(12) (i) A judgment on the common issues for the represented consumers shall bind the represented consumers.

(ii) The plaintiff shall give notice of any judgment or decree to those represented consumers who are bound by it in a form and manner that is approved by the Civil Court.

(iii) Where in its judgement, the Civil Court orders the defendant to pay compensation, it may order the defendant to credit the amount due to a specific account held by the plaintiff and may give such orders, as it deems necessary, to the plaintiff for the effective distribution of that compensation among the represented consumers.

Represented consumers.

(13) (i) A consumer who does not opt-in in accordance with the proviso in sub-article 7 may not do so after the specified date, except with the permission of the Civil Court by means of an application. The Civil Court may grant such permission if it is satisfied that the delay was not caused by the fault of that consumer and the continuation of the proceedings would not suffer substantial prejudice if permission were granted:

Provided that if permission is granted, the consumer shall enter into a representative action agreement in accordance with sub-article 8(1)(c):

Provided further that no appeal shall lie from the Civil Court's decision to grant or refuse permission to opt-in.

(ii) A consumer who has already filed a cause that raises the common issues in the representative action may not be a represented person unless the consumer discontinues or applies to stay that cause before opting-in in the representative action.

(iii) A consumer may also not be a represented person where:

- (a) he has already reached an out of court settlement on the common issues set out in the representative action's decree with the defendant; or
- (b) an arbitration decision between the consumer and the defendant has already been issued on the remedies sought by the group of consumers; or
- (c) a decision on the common issues set out in the representative action's decree has already become *res judicata* before a tribunal or similar body or court of civil jurisdiction and the said tribunal or similar body or court has already decided on the remedies sought by the consumer.

Injunctive measures.

9. (1) Injunctive measures referred to in Article 8(3)(a) shall be available in the form of:

- (a) a provisional measure to cease a practice or, where appropriate, to prohibit a practice, where that practice has been deemed to constitute an infringement as referred to in article 3;

- (b) a definitive measure to cease a practice or, where appropriate, to prohibit a practice, where that practice has been found to constitute an infringement as referred to in article 3:

Provided that in all instances the proceedings relative to injunctive measures shall be dealt with due expediency:

(2) A provisional measure referred to in sub-article (1)(a) shall be dealt with summarily and according to the following procedure:

- (a) at any stage during the redress measure proceedings, the plaintiff may file an application before the Civil Court within the acts of the same redress measure proceedings requesting that provisional measures are issued for such period of time to be established by the Civil Court so that the defendant remedies the situation;
- (b) the application shall be served on the defendant, who shall within eight days from the notification thereof, file his reply to propose any remedies or to contest the request for provisional measures providing the reasons thereto;
- (c) the Civil Court shall decide the application with urgency either *in camera* or after hearing the advocates of the parties, if it deems fit, provided that not more than one sitting may be appointed for such purpose.
- (d) The decree of the Civil Court ordering the issue of provisional measures shall be enforceable upon its delivery, shall remain in force for the period of time established by the Civil Court, and no appeal shall lie from the decree:

Provided that nothing precludes the Civil Court from revoking any provisional measures, from renewing the same provisional measures for further periods or from modifying the said provisional measures in so far as this is necessary and appropriate, according to the circumstances of the case, upon an application of the plaintiff or of the defendant.

- (e) Any person who infringes the decree ordering the provisional measures shall be liable to a penalty according to article 19.

(3) A definitive measure referred to in sub-Article (1)(b) shall include:

- (a) a measure establishing that the practice constitutes an infringement as referred to in article 3; and
- (b) an obligation to publish the decision on the measure in full or in part, in such form as the Civil Court considers appropriate, or an obligation to publish a corrective statement.

(4) The qualified entity requesting a definitive measure in terms of sub-article (1)(b) of this article shall:

- (a) file a sworn application, that is to be notified to all the parties to the judicial proceedings;
- (b) satisfy the Civil Court that the qualified entity has tried to achieve the cessation of the infringement in consultation with the defendant and that cessation was not achieved within two weeks from the request for cessation; and

- (c) not be required to have or to prove an interest in, or to be affected by, the matter or act in issue.

(5) In order for a qualified entity to seek an injunctive measure, individual consumers shall not be required to express their wish to be represented by that qualified entity.

(6) The qualified entity shall not be required to prove:

- (a) actual loss or damage on the part of the individual consumers affected by the infringement as referred to in Article 3(1); or
- (b) intent or negligence on the part of the trader.

(7) Saving the provisions of this Article, the request for an injunctive measure shall be brought in front of a national administrative authority, insofar as provided for by regulations under this Act, instead of being brought before the Civil Court:

Provided that this sub-article shall only apply to national administrative authorities empowered by virtue of regulations made under this Act to have injunctive measures brought before them:

Provided further that where an injunctive measure is brought in front of a national administrative authority, such administrative authority is empowered to regulate its own applicable procedure for the bringing of such action, which procedure is to be in accordance with Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC.

Redress measures.

10. (1) A redress measure shall require a trader to provide consumers concerned with remedies such as compensation, repair, replacement, price reduction, contract termination or reimbursement of the price paid, as appropriate in terms of the provisions of this Act and any other relevant laws and regulations.

(2) A consumer who intends to seek redress measures by joining a representative action shall follow the procedure established in sub-article (1)(c) of article 8, and where applicable, shall also abide by the provisions in the proviso to sub-articles (8) and (13) of article 8.

(3) Notwithstanding sub-article (2), individual consumers who are not habitually resident in Malta shall be bound to explicitly express their wish to be represented in that representative action by following the procedure established in sub-article (1)(c) of article 8, and where applicable, shall also abide by the provisions in the proviso to sub-articles (8) and (13) of article 8 in order for those consumers to be bound by the outcome of that representative action .

(4) Where a redress measure does not specify individual consumers entitled to benefit from remedies provided by the redress measure, it shall at least describe the group of consumers entitled to benefit from those remedies.

(5) A redress measure shall entitle consumers to benefit from the remedies provided by that redress measure without the need to bring a separate action.

(6) Where the Civil Court has established the defendant's responsibility, it shall determine the period in which the defendant shall provide the remedies ordered by the Civil Court.

(7) Qualified entities shall be able to bring representative actions for a redress measure without it being necessary for a court to have previously established an infringement as referred to in Article 3 in separate proceedings.

(8) The remedies provided by redress measures within a representative action shall be without prejudice to any additional remedies available to consumers under European Union or national law which were not the subject of that representative action.

Funding of representative actions for redress measures.

11. (1) Without prejudice to any other provision in any other law prohibiting third party litigation funding, where a representative action for redress measures is funded by a third party, conflicts of interests shall be prevented and funding by third parties that have an economic interest in the bringing or the outcome of the representative action for redress measures does not divert the representative action away from the protection of the collective interests of consumers.

(2) For the purposes of sub-article (1), in particular:

- (a) the decisions of qualified entities in the context of a representative action, including decisions on settlement, shall not be unduly influenced by a third party in a manner that would be detrimental to the collective interests of the consumers concerned by the representative action;
- (b) the representative action shall not be brought against a defendant that is a competitor of the funding provider or against a defendant on which the funding provider is dependent.

(3) The Civil Court, in representative actions for redress measures, shall be empowered to assess compliance with sub-articles (1) and (2) in cases where any justified doubts arise with respect to such compliance. To that end, qualified entities shall disclose to the Civil Court a financial overview that lists sources of funds used to support the representative action.

(4) For the purposes of sub-articles (1) and (2), the Civil Court shall be empowered to take appropriate measures, such as requiring the qualified entity to refuse or make changes in respect of the relevant funding and, if necessary, rejecting the legal standing of the qualified entity in a specific representative action. If the legal standing of the qualified entity is rejected in a specific representative action, that rejection shall not affect the rights of the consumers concerned by that representative action.

Redress settlements.

12. (1). For the purpose of approving settlements, in a representative action for redress measures:

- (a) the plaintiff and the defendant may jointly propose to the Civil Court a settlement regarding redress for the consumers concerned; or
- (b) the Civil Court after having consulted the plaintiff and the defendant, may invite the plaintiff and the defendant to reach a settlement regarding redress within a reasonable time limit.

Provided that the plaintiff is to consult with the represented consumers on behalf of whom the plaintiff filed the representative action prior to moving forward with a settlement.

(2) Settlements referred to in sub-article 1 shall be subject to the scrutiny of the Civil Court. The Civil Court shall assess whether it has to refuse to approve a settlement that is contrary to mandatory provisions of the law, or includes conditions which cannot be enforced, taking into consideration the rights and interests of all parties, and in particular those of the represented consumers. The Civil Court may refuse to approve a settlement on the grounds that the settlement is unfair.

(3) If the Civil Court does not approve the settlement, it shall continue to hear the representative action concerned.

(4) Approved settlements shall be binding upon the plaintiff, the defendant and the represented consumers concerned.

(5) Redress obtained through an approved settlement in accordance with sub-article (2) shall be without prejudice to any additional remedies available to consumers under European Union or national law which were not the subject of that settlement.

Allocation of costs of a representative action for redress measures.

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13. (1) The unsuccessful party in a representative action for redress measures shall be required to pay the costs of the proceedings borne by the successful party, in accordance with any conditions and exceptions provided by the Code of Organisation and Civil Procedure.

(2) Individual consumers concerned by a representative action for redress measures shall not pay the costs of the proceedings.

(3) Saving the provisions of sub-article (2), an individual consumer concerned by a representative action for redress measures may be ordered to pay the costs of proceedings that were incurred as a result of the individual consumer's intentional or negligent conduct.

Information on representative actions.

14. (1) Qualified entities shall provide information, in particular on their website, about:

- (a) the representative actions they have decided to bring before the Civil Court and, or a national administrative authority;
- (b) the status of the representative actions they have brought before the Civil Court and, or a national administrative authority; ; and
- (c) the outcomes of the representative actions referred to in paragraphs (a) and (b).

(2) Consumers concerned by an ongoing representative action for redress measures shall be provided with information about the representative action in a timely manner and by appropriate means, in order to enable those consumers to express their wish explicitly or tacitly to be represented in that representative action pursuant to article 10(2):

Provided that without prejudice to the information referred to in sub-articles (1) and (2), the Civil Court, in the case of redress measures, shall require the defendant to inform the consumers concerned by the representative action, at the defendant's expense, of any final decisions providing

for the measures referred to in Article 8 and any approved settlements as referred to in Article 12, by means appropriate to the circumstances of the case and within specific time limits, including, where appropriate, informing all consumers concerned individually. This obligation shall not apply if the consumers concerned are informed of the final decision or approved settlement in another manner.

(3) The information requirements referred to in the proviso to sub-article (2) shall apply *mutatis mutandis* to qualified entities concerning final decisions on the rejection or dismissal of representative actions for redress measures.

(5) The successful party shall be able to recover the costs related to providing information to consumers in the context of the representative action, in accordance with article 13(1).

Electronic database.

15. The competent authority may set up a national electronic database that is publicly accessible through its website and that provides information on qualified entities designated in advance for the purpose of bringing domestic and cross-border representative actions and general information on ongoing and concluded representative actions. Where the competent authority sets up an electronic database, it shall notify the Commission of the internet address at which that electronic database is accessible:

Provided that the competent authority shall provide on its website the link to the Commission's electronic database to allow accessibility to the public.

Effects of final decisions.

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16. The final decision of a court and, or an administrative authority of any Member State concerning the existence of an infringement harming collective interests of consumers may be used by all parties as evidence in the context of any other action before the Civil Court or a national administrative authority to seek redress measures against the same trader for the same practice, in accordance with the Code of Organisation and Civil Procedure.

Prescription.

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17. (1) A pending representative action for an injunctive measure referred to in Article 9, including an action for an injunctive measure made before a national administrative authority in accordance with Article 9(7), shall have the effect of suspending the prescription periods in respect of the consumers involved in that representative action, so that those consumers are not prevented from subsequently bringing an action for redress measures concerning the alleged infringement as referred to in article 3(1) because the applicable prescription periods expired during the representative action for those injunctive measures.

(2) A pending representative action for a redress measure referred to in Article 10 shall have the effect of suspending prescription periods in respect of the consumers concerned by that representative action:

Provided that the suspension mentioned in this article shall be as established in article 2125(f) of the Civil Code.

Disclosure of evidence.

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18. Where a qualified entity has provided reasonably available evidence sufficient to support a representative action, and has indicated that additional evidence lies in the control of the defendant or a third party, if requested by that qualified entity, the Civil Court shall be empowered to order that such evidence be disclosed by the defendant or the third party in accordance with the Code of Organisation and Civil Procedure subject to the applicable Union and national rules on confidentiality and proportionality. If requested by the defendant, the Civil Court shall also be able to equally order the qualified entity or a third party to disclose relevant evidence, in accordance with the Code of Organisation and Civil Procedure.

Penalties.

19. (1) Subject to the provisions of this Act, where any party, as the case may be, fails or refuses to comply with any order of the Civil Court:

- (a) with respect to a defendant, an injunctive measure referred to in Article 9(1), a decree issued according to Article 9(2)(e) and an order issued pursuant to Article 9(3)(b); or
- (b) with respect to any party, on the obligations referred to in the proviso to Article 14(2) or Article 18;

the Civil Court shall impose penalties of not less than five hundred euro (€500) and not more than ten thousand euro (€10,000).

Appeals.

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20. (1) The provisions of the Code of Organization and Civil Procedure relating to appeals from judgements and decrees of the Civil Court, shall *mutatis mutandis* apply to appeals from judgements and decrees delivered under this Act unless otherwise provided in this Act(2) An appeal from a judgement of the Civil Court on behalf of the group of consumers may only be filed by the plaintiff and not by the group of consumers.

Assistance for qualified entities.

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21. (1) A qualified entity is exempted from the payment of Court registry fees according to Schedule A, Tariff A of the Code of Organization and Civil Procedure upon the filing of the representative action proceedings.

(2) In the event that the Civil Court finds against the qualified entity, the Civil Court shall reduce court registry fees against the qualified entity by between one tenth and one half of the fees normally

due, taking into account the economic standing of the qualified entity and the legal reasons for finding against the qualified entity.

Power to make regulations.

22. The Minister, in consultation with the Minister responsible for Justice, may from time to time make regulations for the better carrying out of the provisions of this Act:

Provided that the Minister may, in consultation with the Minister responsible for Justice, by order in the Gazette list in the Schedule, any European Union legislation, for the purposes of this Act:

Provided further that the Minister may, in consultation with the Minister responsible for Justice, by order in the Gazette amend such list:

Provided further that the Minister may, in consultation with the minister responsible for a national administrative authority make regulations in relation to injunctive measure procedures.

Title III

SCHEDULE

LIST OF PROVISIONS OF UNION LAW REFERRED TO IN ARTICLES 2, 3, 5(3)(b) AND 8(8)

- (1) Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ L 210, 7.8.1985, p. 29).
- (2) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).
- (3) Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air (OJ L 285, 17.10.1997, p. 1).
- (4) Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers (OJ L 80, 18.3.1998, p. 27).
- (5) Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, 7.7.1999, p. 12).
- (6) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1): Articles 5-7, 10 and 11.
- (7) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67): Articles 86-90, 98 and 100.
- (8) Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ L 11, 15.1.2002, p. 4): Articles 3 and 5.

- (9) Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108, 24.4.2002, p. 51): Article 10 and Chapter IV.
- (10) 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 (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37): Articles 4-8 and 13.
- (11) Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271, 9.10.2002, p. 16).
- (12) Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).
- (13) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ L 46, 17.2.2004, p. 1).
- (14) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22).
- (15) Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJ L 376, 27.12.2006, p. 21).
- (16) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36): Articles 20 and 22.
- (17) Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (OJ L 204, 26.7.2006, p. 1).
- (18) Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14).
- (19) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66)
- (20) Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (OJ L 33, 3.2.2009, p. 10).
- (21) Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3): Article 23.

- (22) Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1): Articles 1-35.
- (23) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).
- (24) Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55): Article 3 and Annex I.
- (25) Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94): Article 3 and Annex I.
- (26) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7).
- (27) Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (OJ L 285, 31.10.2009, p. 10): Article 14 and Annex I.
- (28) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1): Articles 183-186.
- (29) Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents (OJ L 131, 28.5.2009, p. 24).
- (30) Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (OJ L 266, 9.10.2009, p. 11).
- (31) Regulation (EC) No 1222/2009 of the European Parliament and of the Council of 25 November 2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters (OJ L 342, 22.12.2009, p. 46): Articles 4-6.
- (32) Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products (OJ L 342, 22.12.2009, p. 59): Articles 3-8 and 19-21.
- (33) Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1): Articles 9-11, 19-26 and 28b.
- (34) Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (OJ L 27, 30.1.2010, p. 1): Articles 9-10.

- (35) Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (OJ L 334, 17.12.2010, p. 1).
- (36) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).
- (37) Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).
- (38) Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (OJ L 55, 28.2.2011, p. 1).
- (39) Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18).
- (40) Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1): Articles 9-11a.
- (41) Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009 (OJ L 94, 30.3.2012, p. 22).
- (42) 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 Union (OJ L 172, 30.6.2012, p. 10).
- (43) Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ L 165, 18.6.2013, p. 63): Article 13.
- (44) Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR) (OJ L 165, 18.6.2013, p. 1): Article 14.
- (45) Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34).

- (46) Directive 2014/31/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of non-automatic weighing instruments (OJ L 96, 29.3.2014, p. 107).
- (47) Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits (OJ L 96, 29.3.2014, p. 357).
- (48) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349): Articles 23-29.
- (49) Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214).
- (50) Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).
- (51) Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98).
- (52) Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and retail charges for regulated intra-EU communications and amending Directive 2002/22/EC and Regulation (EU) No 531/2012 (OJ L 310, 26.11.2015, p. 1).
- (53) Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11.12.2015, p. 1).
- (54) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).
- (55) Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ L 26, 2.2.2016, p. 19): Articles 17-24 and 28-30.
- (56) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).
- (57) Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC (OJ L 117, 5.5.2017, p. 1): Chapter II.

- (58) Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 on in vitro diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU (OJ L 117, 5.5.2017, p. 176): Chapter II.
- (59) Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market (OJ L 168, 30.6.2017, p. 1).
- (60) Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).
- (61) Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (OJ L 169, 30.6.2017, p. 8).
- (62) Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ L 198, 28.7.2017, p. 1): Articles 3-6.
- (63) Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 60 I, 2.3.2018, p. 1): Articles 3-5.
- (64) Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36): Articles 88 and 98-116 and Annexes VI and VIII.
- (65) Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (OJ L 136, 22.5.2019, p. 1).
- (66) Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC (OJ L 136, 22.5.2019, p. 28).

PART II

Amendments to the Consumer Affairs Act

Amendments to the Consumer Affairs Act.

Cap. 378.

23. This Part amends the Consumer Affairs Act, and it shall be read and construed as one with the Consumer Affairs Act, hereinafter in this Part referred to as "the principal Act".

Amends article 2 of the principal Act.

24. The definition "qualified entity" in article 2 of the principal Act shall be amended as follows:

- (a) paragraphs (b), (d) and (e) thereof shall be deleted; and

(b) paragraph (c) thereof shall be re-lettered (b).

Amends article 12 of the principal Act.

25. In sub-article (1) of article 12 of the principal Act, the words “including by a qualified entity,” shall be deleted.

Amends article 12A of the principal Act.

26. In first proviso to sub-article (11) of Article 12A of the principal Act the words “collective proceedings according to the Collective Proceedings Act:” shall be substituted by the words “redress measures according to the Representative Actions (Consumers) Act:”.

Amends article 12C of the principal Act.

27. Article 12C of the principal Act shall be amended as follows:

- (a) sub-article (2) thereof shall be deleted; and
- (b) sub-articles (3) and (4) thereof shall be renumbered (2) and (3) respectively.

Amends article 12G of the Consumer Affairs Act of the principal Act.

28. Article 12G of the principal Act shall be amended as follows:

- (a) in sub-article (1) thereof, the words “or of a qualified entity,” shall be deleted;
- (b) sub-articles (2), (3) and (4) thereof shall be deleted; and
- (c) sub-articles (5), (6), (7), (8) and (9) thereof shall be renumbered (2), (3), (4), (5), and (6).

Amends article 43F of the principal Act.

29. In article 43F of the principal Act, the words “in so far as this is applicable and excluding any references therein to qualified entities.” shall be substituted by the words “in so far as this is applicable.”.

Deletes article 107B of the principal Act.

30. Article 107B of the principal Act shall be deleted.

Amends article 114 of the principal Act.

31. Article 114 of the principal Act shall be amended as follows:

- (a) the words “to have been committed.” shall be substituted by the words “to have committed;” ;
- and

(b) immediately following the words “to have committed;” the following provisos shall be added:

“Provided that this prescription period, with regard to the institution of judicial proceedings concerning infringements under this Act or any regulations made thereunder, shall be interrupted by:

- (i) the notification of the person concerned, of the initiation of investigations according to article 12(2);
- (ii) any entry and search and , or any inspection, made during an investigation according to article 103;
- (iii) any notifications of requests for information made during an investigation according to article 104;
- (iv) and the notification of the invitation by the Director General to engage in commitments discussions according to article 12A.

Cap.9.

Provided further that the said prescription period relative to the prosecution of an offence under this Act or any regulations made thereunder, shall be interrupted according to the provisions of the Criminal Code:

Provided further that the said prescription period shall start to run again from each interruption.”

Part III

Amendments to the Collective Proceedings Act

Amends the Collective Proceedings Act.

Cap. 520.

32. This Part amends the Collective Proceedings Act, and it shall be read and construed as one with the Collective Proceedings Act, hereinafter in this Part referred to as "the principal Act".

Amends article 1 of the principal Act.

33. In article 1 of the principal Act, the words: “the Collective Proceedings Act.” shall be substituted by the words: “the Collective Proceedings (Competition) Act.”

Amends article 2 of the principal Act.

34. In article 2 of the principal Act, immediately after the definition “constituted body” that shall be added the following new definition:

“S.L. 12.19.

“Court” means the Civil Court (Commercial Section) established by article 3 of the Civil Courts (Establishment of Sections) Order;”.

Substitutes article 3 of the principal Act.

35. Article 3 of the principal Act shall be substituted by the following:

“Application of this Act.

3. Collective proceedings may be instituted to seek the cessation of an infringement, the rectification of the consequences of an infringement and, or compensation for harm where:

(a) an infringement of the Competition Act and, or Articles 101 and, or 102 of the TFEU, is alleged to have occurred;

(b) an investigation initiated by the Director General (Competition) according to the Competition Act and, or Articles 101 and, or 102 of the TFEU, or proceedings before a tribunal or similar body or the Court including any other court of civil jurisdiction, concerning an infringement of the Competition Act and, or Articles 101 and, or 102 of the TFEU, is or are still pending; or

(c) a decision or judgement establishing a breach of the Competition Act and, or Articles 101 and, or 102 of the TFEU, in relation to the same facts has become *res judicata*.”.

Substitutes article 4 of the principal Act.

36. Article 4 of the principal Act shall be substituted by the following:

“Filing of collective proceedings for an infringement of the Competition Act. Cap. 379.

4. Where the class representative files a claim for damages arising from an infringement of the Competition Act and, or Articles 101 or 102 of the TFEU, the provisions of article 27A of the Competition Act shall *mutatis mutandis* apply.”

Amends article 5 of the principal Act.

Cap.12.

37. Sub-article (1) of article 5 of the principal Act shall be substituted by the following:

“**5.** (1) Collective proceedings shall be instituted by means of a sworn application, in the Court independently of the amount of the claim, and the provisions of the Code of Organization and Civil Procedure, insofar as they are consistent with the provisions of this Act, shall apply to proceedings under this Act.”

Substitutes article 24 of the principal Act.

38. Article 24 of the principal Act shall be substituted by the following:

“Power to make regulations.

24. The Prime Minister may from time to time make regulations for the better carrying out of the provisions of this Act, and in particular to extend the application of article 12(1) to other representative bodies.”

Deletes Schedule A to the principal Act

39. Schedule A to the principal Act shall be deleted.

Part IV

Amendments to the Malta Competition and Consumer Affairs Authority Act

Amendments to the Malta Competition and Consumer Affairs Authority Act.

Cap. 510.

40. This Part amends the Malta Competition and Consumer Affairs Authority Act and it shall be read and construed as one with the Malta Competition and Consumer Affairs Authority Act, hereinafter in this Part referred to as "the principal Act".

Amends article 29 of the principal Act.

41. In paragraph (f) of sub-article (1) of article 29 of the principal Act, the words “including a qualified entity”, shall be deleted.

Amends article 64 of the principal Act.

42. In the English version of the principal Act, in sub-article (3) of article 64, the wherever the words “Appeals Tribunal” occur shall be substituted by the words “Civil Court”.

Part V

Amendments to the Civil Courts (Establishment of Sections) Order

Amendments to the Civil Courts (Establishment of Sections) Order.

S.L. 12.19.

43. This Part amends the Civil Courts (Establishment of Sections) Order and it shall be read and construed as one with the Civil Courts (Establishment of Sections) Order, hereinafter in this Part referred to as "the principal Order".

Amends article 5A of the principal Order.

Cap.510.

44. In article 5A of the principal Order the words “and by the Malta Competition and Consumer Affairs Authority Act.” shall be substituted by the words “by the Malta Competition and Consumer Affairs Authority Act, and by the Representative Actions (Consumers) Act.”.

Part VI

Amendments to the Civil Code

Amendments to the Civil Code.
Cap. 16.

45. This Part amends the Civil Code and it shall be read and construed as one with the Civil Code, hereinafter in this Part referred to as "the principal Code".

Amends article 2125 of the principal Code

46. Article 2125 of the principal Code shall be amended as follows:

- (a) in the proviso to paragraph (e) the words "to this paragraph." shall be substituted by the word "to this paragraph;"; and
- (b) immediately after paragraph (e) the following new paragraph (f) shall be included:

"(f) where a qualified entity as defined in the Representative Actions (Consumers) Act has brought a representative action according to the same Act, until the proceedings are decided definitively."

Part VII

Amendments to the Malta Communications Authority Act

Amendments to the Malta Communications Authority Act, Cap. 418.

47. This Part amends the Malta Communications Authority Act, and it shall be read and construed as one with the Malta Communications Authority Act, hereinafter in this Part referred to as "the principal Act".

Amends article 2 of the principal Act.

48. In article 2 of the principal Act immediately after the definition of the words "public officer" there shall be added the following new definition:

"Act No XX of 2022

"qualified entity" shall have the same meaning as under article 4 of the Representative Actions (Consumers) Act, 2022;"

Amends article 31 of the principal Act.

49. Article 31 of the principal Act shall be amended as follows:

(a) In paragraph (b) of sub-article (1) thereof the words “order the cessation” shall be substituted with the words “issue a compliance order requiring the cessation”.

(b) In paragraph (c) of sub-article (1) thereof the words “order the delay of a service or bundle of services which” shall be substituted with the words “issue a compliance order requiring the delay of a service or bundle of services which”; and

(c) In paragraph (d) of sub-article (1) thereof the words “order the taking of any such measures” shall be substituted with the words “issue a compliance order requiring the taking of any such measures”.

Adds new articles to the principal Act.

50. After article 31 of the principal Act there shall be added the following new article:

“Application by a qualified entity requesting the issue of a compliance order by the Authority under article 31.

31A. (1) A qualified entity may apply to the Authority for the issue of a compliance order requesting any of the measures listed in paragraphs (b), (c) or (d) of sub-article (1) of article 31. In doing so a qualified entity shall submit a written application to the Authority whereby it must satisfy the Authority that it tried to achieve the cessation of the infringement in consultation with either the person against whom the compliance order is being sought or with both such a person and another qualified entity of the Member State in which the compliance order or a similar measure is being sought:

(2) The Authority shall only consider an application made in accordance with sub-article (1) if the qualified entity shows to the satisfaction of the Authority that:

(a) the cessation of the infringement was not achieved within two weeks after the request for consultation was received by the person against whom such compliance order is being sought; and

(b) the application relates to an infringement that harms or may harm the collective interests of consumers.

(3) It shall be at the discretion of the Authority whether or not to issue any such compliance order subsequent to a written application by a qualified entity to it:

Provided that if the Authority decides not to issue any such compliance order after an application has been made to it, the Authority shall, within two (2) working days from the date of its decision not to issue any such compliance order, notify in writing the qualified entity concerned and the person against whom the aforesaid measure was sought, with its decision stating the reasons thereof.

(4) The Authority shall decide any application by a qualified entity under sub-article (1) within sixty (60) days of its receipt by the Authority.

(5) In order for a qualified entity to seek the issue of a compliance order by the Authority, it shall not be necessary for individual consumers to express their wish to be represented by that qualified entity.

(6) A qualified entity in seeking the issue of a compliance order by the Authority shall not be required to prove:

(a) actual, loss or damage on the part of the individual consumers affected by the infringement of the law enforced by the Authority in relation to which a compliance order is being requested; or

(b) intent or negligence on the part of the person against whom the compliance order is being requested.

Amends article 33A of the principal Act.

51. Article 33A of the principal Act shall be amended as follows:

(a) Article 33A shall be renumbered as article 33A (1); and

(b) After article 33A (1) there shall be added the following:

“(2) Without prejudice to the provisions of sub-article (1) the Authority may require the person against whom a compliance order has been issued to publish at its expense the final decision issued by the Authority pertinent to the issue of the compliance order in full or in part in such form as the Authority considers appropriate.”

Amends article 37 of the principal Act.

52. After article 37(3) of the principal Act there shall be added the following new subarticle:

“(4) Where a person against whom a compliance order has been issued by the Authority in accordance with article 31 following an application by a qualified entity files an appeal from the issue of such an order before the Tribunal, then the qualified entity on whose request the order was issued shall also be notified with the appeal and shall have twenty (20) days in which to reply to the appeal commencing from the date when it is notified with the aforesaid appeal.”.

Adds new article to the principal Act.

53. After article 37 of the principal Act there shall be added the following new article:

“Applications by a qualified entity to the Tribunal.

37A. (1) A qualified entity may apply to the Tribunal for the issue of an order by the Tribunal requiring the Authority to take any such measures in accordance with article 31(1) as the Tribunal may determine where:

(a) The Authority decides not to uphold its application for the issue of a compliance order under article 31(1), or

(b) The Authority fails to issue a decision within sixty (60) days of its receipt of the application requesting the issue of a compliance order under article 31(1):

Provided that any such application shall be filed within twenty (20) days in case of paragraph (a) commencing from the date of the decision of the Authority, and in case of paragraph (b) commencing from the date of the lapse of sixty (60) days period:

Provided further that the qualified entity shall notify the person against whom the compliance order was requested and the Authority with its application.

(2) The person against whom the compliance order is requested, and the Authority shall be parties to any such proceedings before the Tribunal and shall have the right to reply to the application by the qualified entity within twenty (20) days from the notification of the aforesaid application to them.”.

Part VIII

Amendments to the Electronic Commerce Act

Amendment to the Electronic Commerce Act.
Cap. 426.

54. This Part amends the Electronic Commerce Act, and it shall be read and construed as one with the Electronic Commerce Act, hereafter referred in this Part referred to as “the principal Act”.

Amends article 2 of the principal Act.

55. In article 2 of the principal Act the definition of the words “qualified entity” shall be deleted.

Amends article 24B of the principal Act.

56. In article 24B (1) of the principal Act the words “it may, of its own initiative or on a written application to it by a qualified entity, issue a compliance order” shall be substituted with the words “it may issue a compliance order”.

Deletes articles 24C to 24D of the principal Act.

57. Articles 24C to 24D of the principal Act shall be deleted.

Amends article 24E of the principal Act.

58. In article 24E (1) of the principal Act the words “The competent regulator and where appropriate any qualifying entity that may have requested the issue of the compliance order, shall be notified with the appeal and shall have twenty days from the date when they are notified with the appeal in which to reply.” shall be substituted with the words “The competent regulator shall be notified with the appeal and shall have twenty (20) days from the date when it is notified with the appeal in which to reply.”.

Amends article 24F of the principal Act.

59. In article 24F (1) the words “under articles 24D and 24E” shall be substituted with the words “under article 24E”.

Amends article 24J of the principal Act.

60. In article 24J of the principal Act the words “the procedures as stated in articles 24D and 24E shall apply.” shall be substituted with the words “the procedures as stated in article 24E shall apply.”.