L.N. 27 of 2005

EUROPEAN UNION ACT
(CAP. 460)

Implementation of Safeguard Clauses (Amendment) Order, 2005

BY virtue of the powers conferred under Article 4(2) of the European Union Act (Cap. 460), the Prime Minister and Minister of Finance has made the following Order:

Citation.

1. This order may be cited as the Implementation of Safeguard Clauses (Amendment) Order, 2005 and it shall be read and construed as one with the Implementation of Safeguard Clause Order, 2004, hereinafter referred to as "the principal Order.". L.N. 234 of 2004.

Amends Article 2 of the principal Order.

2. In Article 2 of the principal Order, immediately after the definition "the competent authority" there shall be added the following new definition:

" "Court of Appeal" means the Court of Appeal as constituted in terms of subarticle (6) of article 41 of the Code of Organiszation and Civil Procedure;". Cap. 12.

Amends Article 9 of the principal Order.

3. Article 9 of the principal Order shall be amended as follows:

(a) in the marginal note thereof, for the word "penalties" there shall be substituted the words "administrative fines";

(b) in subarticle (2) thereof, for the words "a penalty" and "a further penalty" wherever they occur, there shall be substituted the words "an administrative fine" and "a further administrative fine" respectively; and

(c) immediately after subarticle (2) thereof, there shall be added the following new subarticle:-

"(3) In determining the amount of an administration fine regard shall be had, in particular, to the nature and extent of the infringement, its duration and its impact on the market.".

Adds new article 10 to the principal Order.

4. Immediately after article 9 of the principal Order, there shall be added the following new article:

"Procedure for administrative fines.

10. (1) Before imposing an administrative fine, the competent authority shall write to the person concerned warning him that an administrative fine may be imposed, and inform him of the amount of the fine that may be imposed and the specific reasons for which it may be imposed, and granting such person a period of not less than ten days as the competent authority may determine to be appropriate in the circumstances, during which period such person may make his submissions to the competent authority.

(2) Before deciding whether to impose an administrative fine, the competent authority shall consider the submissions, if any, made to it under subarticle (1) hereof.

(3) If after the lapse of the period during which submissions may be made in accordance with subarticle (1), the competent authority considers that such person has not given any valid proof or reasons to demonstrate that the administrative fine referred to in subarticle (1) should not be imposed, the competent authority shall impose an administrative fine in accordance with this Order and shall give notice in writing to such person specifying the nature of the infringement and the amount of the administrative fine due.

(4) The notice as referred to in subarticle (3) shall, without prejudice to the right of appeal under article 13 (2) of this Order, upon the service of a copy thereof by means of a judicial act on the person indicated in the notice, constitute an executive title for all effects and the purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure.

(5) Notwithstanding the provisions of article 256(2) of the Code of Organization and Civil Procedure, the executive title referred to in subarticle (4) of this article shall not be enforceable before the lapse of thirty days from the service of the judicial act therein referred to:

Provided that where an appeal against an administrative fine in accordance with article 13(2) has been filed, the said executive title shall not be enforceable unless the Court of Appeal rejects the appeal or unless the proceedings on appeal are deserted or otherwise discontinued without final judgement:

Provided further that where the Court of Appeal confirms or varies the amount of the administrative fine, the executive title referred to in subarticle (4) shall apply up to the amount of the fine as confirmed or varied by the Court of Appeal and shall be enforceable after the judgement of the said Court.".

Adds new article 11 to the principal Order.

5. Immediately after article 10 of the principal Order, there shall be added the following new article:

"Breaches by body corporate.

11. Where a breach of this Order mentioned in article 9(1) is committed by a body corporate and is proved to have been committed with the consent or involvement of, or attributable to any gross negligence on the part of a person being a director, manager, secretary or other officer, however so described, of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be liable to be proceeded against and punished as if he was responsible for the said infringement.".

Adds new article 12 to the principal Order.

6. Immediately after article 11 of the principal Order, there shall be added the following new article:

"Right of appeal.

12. There shall be a right of appeal to the Court of Appeal from decisions of the competent authority to impose an administrative fine in terms of this Order.".

Adds new article 13 to the principal Order.

7. Immediately after article 12 of the principal Order, there shall be added the following new article:

"Procedure on appeal.

13. (1) The procedure to be followed in relation to appeals against administrative fines imposed by the competent authority shall be regulated by the provisions of this article.

(2) A person who is notified with a judicial act referred to in article 10(4) may, within thirty days from the date of such notification, lodge an appeal before the Court of Appeal objecting to the administrative fine so fixed.

(3) The Court of Appeal shall not annul an administrative fine as aforesaid unless such fine cannot at law be imposed in the circumstances of the case or cannot at law be fixed in the amount established by the competent authority, due account being given to the principle of proportionality.

(4) The Court of Appeal shall without delay set down the appeal for hearing at an early date, which date shall

in no case be later than forty days from the date of the service of the appeal on the competent authority.

(5) The appeal, and the notification of the date fixed for hearing shall be notified to the competent authority without delay, and the competent authority shall file its reply thereto within twenty days from the date of the notification of the appeal.

(6) The decision of the Court of Appeal upon an appeal referred to in subarticle (2), confirming the imposition of a fine established by the competent authority or reducing any such fine, shall render such fine a *res judicata*.".

Adds new article 14 to the principal Order.

8. Immediately after article 13 of the principal Order there shall be added the following new article:

"Hearing and determination of appeal.

14. (1) In determining an appeal, the Court of Appeal shall take into account the merits of the case and may, in whole or in part, confirm or annul the decision appealed from, giving reasons for its decision.

(2) The provisions of the Code of Organization and Civil Procedure regarding the hearing of appeals shall apply to any appeal filed under this Order.".

Adds new article 15 to the principal Order.

9. Immediately after article 14 of the principal Order there shall be added the following new article:

"Burden of proof.

15. Where in proceedings relating to any alleged breach of this Order any dispute arises as to whether any trader was the importer into Malta of any goods to which this order applies, any trader found in possession of the said goods shall be presumed to be the importer thereof unless he provides proof to the contrary.".

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