A 880

I assent.

(L.S.) **GEORGE VELLA**
President

23rd July, 2021

ACT No. XLIV of 2021

An ACT to amend the Consumer Affairs Act, Cap. 378 and other Laws, and to make ancillary and consequential provisions thereto.

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 and commencement.

1. (1) The short title of this Act is the Consumer Affairs Act and other Laws (Amendment) Act, 2021.

(2) This Act shall come into force on such date as the Minister for Tourism and Consumer Protection may by notice in the Gazette establish, and different dates may be so established for different provisions of this Act.

PART I
Amendments to the Consumer Affairs Act

Amendments to the Consumer Affairs Act. Cap. 378.

2. 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".

3. In article 2 of the principal Act the definition "Consumer Protection Co-operation Regulation" shall be substituted by the following new definition: Amendment of article 2 of the principal Act.

" "Consumer Protection Co-operation Regulation" means Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No. 2006/2004:

Provided that for the purposes of the implementation of the Consumer Protection Co-operation Regulation, the definitions contained therein shall apply, without prejudice to the definitions contained in this Article;".

4. Article 12 of the principal Act shall be amended as follows: Amendment of article 12 of the principal Act.

(a) sub-article (1) thereof shall be substituted by the following new sub-article:

"(1) Saving the provisions of article 17(1)(f) of the Malta Competition and Consumer Affairs Authority Act, Cap. 510. to ensure the observance of the provisions of this Act and any regulations made thereunder, the Director General shall have the power to carry out investigations of his own motion or upon a reasonable allegation in writing made by any person including by a qualified entity, of an infringement of the provisions of this Act and any regulations made thereunder."; and

(b) sub-article (5) thereof shall be substituted by the following new sub-article:

"(5) Without prejudice to articles 12A and 13, where, upon the conclusion of an investigation, it appears *prima facie* to the Director General that an infringement of a provision of this Act or of any regulations made thereunder has occurred, the Director General shall institute judicial proceedings against the person concerned before the Civil Court by means of a sworn application.".

5. Article 12A of the principal Act shall be substituted by the Substitution of article 12A of the principal Act.

following new article:

"Commitments procedure.

12A. (1) At any stage of an investigation initiated according to article 12, or any stage of judicial proceedings instituted according to article 12(5), the Director General may seek to obtain or to accept commitments from the person concerned to cease the alleged infringement, including also, on the initiative of the person concerned, additional remedial commitments for the benefit of consumers that have been affected by the alleged infringement:

Provided that in such instances the Director General together with the person concerned shall have the right to demand that the investigation or the judicial proceedings, as the case may be, are terminated by means of the commitments procedure which includes the imposition of a penalty by the Civil Court on the person concerned, as provided for in the following provisions of this article.

(2) The termination of the investigation or of the judicial proceedings, as the case may be, by means of the commitments procedure shall be granted by virtue of a judgement delivered by the Civil Court upon the demand made jointly by the Director General and the person concerned, where the Director General and the person concerned agree that the investigation or the judicial proceedings, as the case may be, are terminated by means of the commitments procedure, which includes the imposition of a penalty by the Civil Court according to article 106A:

Provided that in those instances where the investigation concerns more than one person, not all persons concerned who are under investigation or who are subject to judicial proceedings instituted according to article 12(5) must agree to submit to the commitments procedure. In such instances the investigation or the judicial proceedings shall continue with regard to that person or persons concerned who do not agree to submit to the commitments procedure.

(3) The joint demand mentioned in sub-article (2) shall be made by means of a joint application filed in the Civil Court:

Provided that the Civil Court must be satisfied that all the requirements of sub-article (7) are reflected in the joint application:

Provided further that after the Civil Court considers that the requirements of sub-article (7) have all been satisfied, the Civil Court shall appoint a sitting to confirm that the person concerned is not contesting the contents of the commitments submissions and that all the parties concerned express their unconditional willingness to terminate the investigation or the judicial proceedings by means of the commitments procedure, after which sitting, the Civil Court shall pronounce judgement on the basis of the joint application:

Provided further that the joint application shall, solely for information purposes, also be notified to any qualified entity that had alleged the infringement according to article 12(1).

(4) In the course of an investigation the Director General may prior to instituting judicial proceedings according to article 12(5), if he deems it appropriate for the expeditious and efficient conclusion of the investigation, invite the person concerned to indicate in writing, within the time limit set by the Director General, whether the person concerned is prepared to engage in commitments discussions with a view to possibly introducing commitments submissions:

Provided that the Director General shall not be obliged to take into account the replies received after the expiry of that time limit:

Provided further that at any time during the course of an investigation the person concerned may also request to engage in commitments discussions with the Director General:

Provided further that the decision regarding the initiation of the commitments discussions falls within the exclusive competence of the Director General.

(5) Should the Director General ascertain that sufficient progress in the commitments discussions has taken place, the Director General shall invite the person concerned to introduce commitments submissions before the Director General within a time limit as set by the Director General with a view to conclude the commitments procedure:

Provided that before the Director General sets a time limit to introduce commitments submissions, the person concerned may be informed of the main elements of the suspected infringement, consisting of:

(a) the evidence found;

(b) the legal assessment of the facts; and

(c) the specific amount of the penalty to be requested by the Director General:

Provided further that before the Director General sets a time limit for the person concerned to introduce commitments submissions, the person concerned may have limited access to the file of the investigation concerning the case which is granted only to the extent that the Director General deems reasonable in view of the objectives of the commitments procedure. If access to the file is granted, the Director General shall provide partial access to the case file by providing non-confidential versions of any specified accessible document listed in the case file at that point in time:

Provided further that if the person concerned fails to submit the commitments submissions within the time limit set by the Director General, it shall be considered that the person concerned has withdrawn from the commitments procedure.

(6) The documents and the information exchanged between the Director General and the person concerned during the commitments procedure are confidential:

Provided that the information given according to sub-article (5) shall be confidential *vis-à-vis* third parties, save where the Director General has given a prior explicit authorisation for disclosure:

Provided further that the exchanged documents will only be accessible to other persons concerned who are under investigation or who have been served with a sworn application according to article 12C, if the lack of access to these documents would hinder the rights of defence of these other persons concerned.

(7) The commitments submissions which are to be included in the joint application shall contain a voluntary statement by the person concerned containing the following information:

(a) a statement by the person concerned, clearly and unequivocally admitting his infringement of those provisions of the Act and of the regulations made thereunder mentioned in the investigation or in the judicial proceedings;

(b) a factual and brief description of the conduct of the person concerned, the objective of the conduct and the way in which it was carried out, its duration and the extent in which the person concerned was involved;

(c) a statement of the person concerned declaring that he accepts the amount of the penalty that is being requested by the Director General in the joint application, as reduced according to sub-article (9);

(d) a statement of the person concerned to the effect that he was sufficiently informed by the Director General regarding the main elements of the suspected infringement contained in sub-article (5) and a declaration of the person concerned that he was given sufficient opportunity to be heard and to make his views known to the Director General;

(e) a statement of the person concerned that he will waive his right to obtain further or full access to the file of the investigation concerning his case;

(f) a statement of the person concerned containing his waiver of his right to appeal and, or to challenge in any way the commitments procedure and, or the judgement of the Civil Court including the penalty; as well as his waiver of any action or claim arising from the same commitments procedure and, or related to the judgment of the Civil Court and, or to the penalty; and

(g) a statement of the person concerned that he agrees with the contents of the commitments submissions and that he agrees that a joint application is filed in Civil Court with the Director General to terminate the investigation or the judicial proceedings, as the case may be, by means of commitments, and to request the Civil Court to deliver a judgement according to the commitments submissions:

Provided that together with the commitments submissions the joint application shall also include a statement by the Director General:

(a) agreeing with the commitments submissions of the person concerned;

(b) specifying the amount of the penalty he is requesting to be imposed on the person concerned as reduced according to sub-article (9); and

(c) requesting the Civil Court to deliver a judgement to terminate the investigation or the judicial proceedings, as the case may be, by means of commitments based on the commitments submissions of the person concerned contained in the joint application and to impose the amount of the penalty as requested by the Director General:

Provided further that the commitments submissions may also include additional remedial commitments for the benefit of consumers that have been affected by the alleged infringement and adequate remedies to the consumers that have been affected by that infringement intended to contribute to removal of the adverse impact on affected consumers. Those remedies may include, *inter alia*, repair, replacement, price reductions, the termination of contract or the reimbursement of the price paid for the goods or services, as appropriate, to mitigate the negative consequences of the infringement on the affected consumer:

Provided further that this shall be without prejudice to a consumer's right to seek redress through the appropriate means where the consumer would not have benefited from the remedies that the person concerned may have provided.

(8) Commitments discussions may also be proposed jointly by the parties at a later stage, when a sworn application according to article 12(5) would have already been filed by the Director General before the Civil Court:

Provided that the Civil Court may adjourn two sittings so that within such time the parties would be able to consider the commitments procedure and file a joint application as referred to in sub-article (3):

Provided further that if the Director General and, or the person concerned fail to file a joint application within the adjourned two sittings allocated by the Civil Court, proceedings against the person concerned shall continue according to the stage where the proceedings before the Civil Court had arrived.

(9) If the person concerned agrees to terminate the investigation or the judicial proceedings by means of commitments, by filing together with the Director General the joint application, the Director General shall reward the person concerned for the commitments, by reducing between ten to thirty-five percent (10% - 35%) of the amount of the penalty requested to be imposed by the Civil Court on the person concerned:

Provided that the penalty, for each infringement, shall not be less than four thousand six hundred and fifty euro (€4,650).

(10) The Director General may decide at his own discretion at any time during the commitments discussions to discontinue the commitments procedure altogether in a specific case or with respect to one or more of the parties involved, if, for instance:

(a) procedural efficiencies are not likely to be achieved; or

(b) the commitment submissions do not contain all the requirements mentioned in sub-article (7); or

(c) the person concerned does not have a sincere intention of submitting to commitments or does not cooperate or has breached the confidentiality obligation by revealing to any third party the content of the commitments meetings held with the Director General or the contents of the documents to which access has been granted:

Provided that in case where the Director General discontinues the commitments discussions for any reason as provided for in this sub-article or in the case where the person concerned or the Director General, as the case may be, withdraw or discontinue the commitments procedure as provided for in sub-articles (5) and (8), the case shall proceed according to the stage where the investigation or proceedings have arrived.

(11) If the commitments procedure is discontinued either by the Director General or by the person concerned during the investigation or during the judicial proceedings, any information and any document provided by the person concerned during the commitments procedure cannot be used as evidence to establish an infringement of those provisions of the Act and of the regulations made thereunder mentioned in the investigation or in the judicial proceedings against the person concerned or other parties to the investigation before any court of law:

Provided that the foregoing provision of this sub-article is without prejudice to any consumers' judicial action, with regard to consumer claims or actions for damages, including collective proceedings according to the Collective Proceedings Act: Cap. 520.

Provided further that documents and, or information which were already in the possession of the Director General prior to being presented by the person concerned and any information which can be requested by the Director General according to the Act, can be used as evidence by the Director General and before any court of law to establish an infringement of the Act and the regulations made thereunder, against the person concerned or against any other persons concerned or against any other party to the investigation.".

Amendment of article 12B of the principal Act.

6. In sub-article (2) of article 12B of the principal Act the words " ".Addition of new Part IIA and new articles to the principal Act." shall be deleted.

Amendment of the provisions of Part IIA of the principal Act.

7. In the provisions of Part IIA of the principal Act wherever the word "defendant" occurs it shall be substituted by the words "person concerned".

Amendment of article 12C of the principal Act.

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

(a) paragraph (c) of sub-article (1) thereof shall be substituted by the following new paragraph:

"(c) contain a request by the Director General to the Civil Court for:

(i) the imposition of a penalty on the person

concerned according to article 106A for each infringement:

Provided that the Director General may also indicate a specific amount of the penalty either in his sworn application or by a note presented in Court during the judicial proceedings; and, or

(ii) any other remedy as contemplated in this Act; and, or

(iii) any other relevant order, including a compliance order or any other order, that may be necessary according to the circumstances of the case including, where appropriate, and where no other effective means are available to bring about the cessation or the prohibition of an infringement under this Act and of any other regulations made thereunder, and in order to avoid the risk of serious harm to the collective interests of consumers:

- to remove content or to restrict access to an online interface or to order the explicit display of a warning to consumers when they access an online interface;

- to order a hosting service provider to remove, disable or restrict access to an online interface; or

- where appropriate, to order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it:

including by ordering a third party or other public authority to implement such measures:

Provided that the provisions of article 156 of the Code of Organization and Civil Procedure shall, where applicable, also apply to the sworn application."; and

Cap. 12.

(b) immediately after sub-article (3) thereof there shall

be added the following new sub-article (4):

"(4) During the judicial proceedings the person concerned in receipt of a sworn application shall be entitled, upon a request to this effect in his sworn reply, to have access to the file of the investigation concerning his case, without prejudice to the non-disclosure of information or documents identified by the Director General as containing business secrets or other confidential information, or of internal documents of the Director General or of the Consumer Protection Authorities of other Member States, and without prejudice to the provisions contained in Part VIII of the Malta Competition and Consumer Affairs Authority Act. The Director General shall provide such access to the file of the investigation at any time prior to the conclusion of his evidence.".

Cap. 510.

9. Article 12E of the principal Act shall be amended as follows:

Amendment of article 12E of the principal Act.

(a) sub-article (1) thereof shall be substituted by the following new sub-article:

"(1) In cases of urgency due to the risk of immediate and serious harm to the collective interests of consumers, the Director General may, at any stage during an investigation initiated according to article 12, or at any stage during the judicial proceedings initiated according to article 12(5), file an application before the Civil Court requesting that interim measures are issued for such period of time to be established by the Civil Court so that the person concerned remedies the situation."; and

(b) in sub-article (2) thereof the word "sworn" shall be deleted.

10. Immediately after article 12F of the principal Act there shall be added the following new provisos:

Amendment of article 12F of the principal Act.

"Provided that the Civil Court shall also have the power:

(a) to remove content or to restrict access to an online interface or to order the explicit display of a warning to consumers when they access an online interface;

(b) to order a hosting service provider to remove, disable or restrict access to an online interface; or

(c) where appropriate, to order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it,

where no other effective means are available to bring about the cessation or the prohibition of an infringement under this Act and of any other Regulations made thereunder, and in order to avoid the risk of serious harm to the collective interests of consumers:

Provided further that the Civil Court may order a third party or other public authority to implement such measures.".

Amendment of article 12G of the principal Act.

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

(a) sub-article (9) thereof shall be deleted; and

(b) sub-article (10) thereof shall be renumbered as sub-article (9).

Amendment of article 12H of the principal Act.

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

(a) the marginal note thereof shall be substituted by the following words "Procedure, Judgements and Publications.";

(b) sub-article (3) thereof shall be substituted by the following new sub-article:

"(3) Where the Civil Court has in its judgment found the person concerned liable of an infringement or of infringements of this Act or of any regulations made thereunder, it shall impose a penalty according to article 106A for each infringement.";

(c) in sub-article (4) thereof the word "decisions" shall be substituted by the word "judgments"; and

(d) immediately after sub-article (5) thereof there shall be added the following new sub-articles:

"(6) When publishing judgements and decrees, the Civil Court shall have regard to the legitimate interest of the person concerned in the protection of his business secrets or other confidential information. The Civil Court may give the parties concerned the opportunity to specify the confidential parts of the judgement or decree which they want to be excluded from publication:

Provided that the Civil Court shall ultimately decide about which version shall be published:

Provided further that the Director General shall also publish on the website of the Authority the judgement delivered by the Civil Court.

(7) The Director General shall also publish on the website of the Authority a notice whereby it is stated that a sworn application has been filed according to article 12C having regard to the legitimate interest of the person concerned in the protection of his business secrets and other confidential information. The publication may contain the name of the person concerned against whom the Director General has filed a sworn application and a brief description of the type of the alleged infringement as well as the affected business sector.".

Amendment of article 13 of the principal Act.

13. In sub-article (1) of article 13 of the principal Act the words "article 12A" shall be substituted by the words "article 12".

Amendment of article 20 of the principal Act.

14. Article 20 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof the words "does not exceed three thousand five hundred euro (€3,500)" shall be substituted by the words "does not exceed five thousand euro (€5,000)"; and

(b) in the proviso to paragraph (b) of sub-article (2) thereof the words "exceeds three thousand five hundred euro (€3,500)" shall be substituted by the words "exceeds five thousand euro (€5,000)".

Substitution of article 103 of the principal Act.

15. Article 103 of the principal Act shall be substituted by the following:

"Entry of inspection and other powers. Cap. 377.

103. (1) For the purpose of discharging his functions under this Act, without prejudice to the provisions of the Professional Secrecy Act, and to the provisions of article 104 (2) of this Act, the Director General may:

(a) enter and search any premises, land or means of transport that the trader concerned by the inspection uses for purposes related to his trade, business, craft or profession, or to request other public authorities to do so, in order to examine, seize, take or obtain copies of information, data or documents, irrespective of their storage medium:

Provided that the power to enter and search premises used exclusively as a place of residence shall only be exercised when duly authorised by a warrant issued by a Magistrate;

(b) make any inspection, conduct any test and on paying or making tender therefor, take any goods;

(c) seize any books, records, information, data or documents however kept or stored for a necessary period and to the extent necessary for the inspection;

(d) request any representative or member of the staff of the trader concerned by the inspection to give explanations of facts, books, records, information, data or documents relating to the subject matter of the inspection and to record the answers;

(e) purchase goods or services as test purchases, where necessary, under a cover identity, in order to detect infringements covered by this Act and to obtain evidence, including the power to inspect, observe, study, disassemble or test goods or services:

Provided that the Director General shall give to the person from whom anything has been taken, a receipt for what has been taken:

Provided further that no entry and search shall be effected between seven in the evening and seven in the morning, unless the Director General has reason to believe that delay could cause the loss of necessary information, and in such circumstances, the entry and search shall only be exercised when duly authorised by a warrant issued by a Magistrate.

(2) Nothing in this Part shall be deemed to detract from the powers of the Police under the Criminal Code or any other law.

Cap. 9.

(3) In the course of any entry and search under this Part, the Director General may request the assistance of the Police.".

16. Article 104 of the principal Act shall be substituted by the following new article:

Substitution of article 104 of the principal Act.

"104.(1) The Director General may, for the purpose of discharging his functions under this Act, require any natural person or legal person to provide any information in any manner, including:

(a) by answering any questions, orally or in writing; or

(b) by producing any relevant documents, data or information related to an infringement covered by this Act or any Regulations made thereunder, in any form or format and irrespective of their storage medium, or the place where they are stored as the Director General may consider to be necessary:

Provided that the Director General may also require any public authority, body or agency or any natural person or legal person to provide any relevant information, data or documents, in any form or format and irrespective of their storage medium, or the place where they are stored, for the purposes of establishing whether an infringement covered by this Act or any Regulations made thereunder has occurred or is occurring, and for the purposes of establishing the details of such infringement, including tracing financial and data flows, ascertaining the identity of persons involved in financial and data flows, and ascertaining bank account information and ownership of websites.

(2) A person shall not be required to answer any question if the answer may subject him to criminal proceedings.".

Amendment of article 106A of the principal Act.

17. The words "Administrative fines" in the marginal note of article 106A of the principal Act shall be substituted by the word "Penalties".

Amendment of the Second Schedule to the principal Act.

18. The Second Schedule to the principal Act shall be amended as follows:

(a) one of the two titles "SECOND SCHEDULE (Article 106A (3))" shall be deleted;

(b) wherever the word "defendant" occurs it shall be substituted by the words "person concerned"; and

(c) rule 7 thereof shall be substituted by the following:

"For the infringement referred to in article 12A, the amount of the penalty shall not be less than four thousand six hundred and fifty euro (€4,650) and not more than forty-seven thousand euro (€47,000).".

PART II
Amendments to the Malta Competition and Consumer Affairs Authority Act

Amendments to the Malta Competition and Consumer Affairs Authority Act. Cap. 510.

19. 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".

Amendment of article 29 of the principal Act.

20. In sub-article (1) of article 29 of the principal Act, immediately after paragraph (d) thereof, there shall be added the following new paragraphs:

"(e) the addressee of an invitation by the Director General to engage in commitments discussions under article 12A of the Consumer Affairs Act;

(f) any person including a qualified entity making a reasonable allegation in writing according to article 12(1) of the Consumer Affairs Act.".

Amendment of article 70 of the principal Act.

21. Article 70 of the principal Act shall be amended as follows:

(a) in sub-article (2)(b) thereof the words "the Competition Act and Consumer Affairs Act and other Laws (Amendment) Act, 2019:" shall be substituted by the words "the Competition Act and Consumer Affairs Act and other Laws (Amendment) Act, 2019, including appeals from decisions of the Competition and Consumer Appeals Tribunal pending before the Court of Appeal:";

(b) immediately after the first proviso to sub-article (2) thereof there shall be added the following new proviso:

Act No. XLIV of 2021.

"Provided further that the provisions of the Consumer Affairs Act existing after the entry into force of the Consumer Affairs Act and other Laws (Amendment) Act, 2021, shall apply to investigations commenced by the Director General (Consumer Affairs) after such entry into force, and to judicial proceedings filed by the Director General (Consumer Affairs) according to article 12(5) of the Consumer Affairs Act at the conclusion of these investigations:";

(c) in sub-article (5) thereof the words "the Competition Act and the Consumer Affairs Act and other Laws (Amendment) Act, 2019." shall be substituted by the words "the Competition Act and the Consumer Affairs Act and other Laws (Amendment) Act, 2019:" and immediately thereafter there shall be added the following new proviso:

Cap. 378. Act No. XLIV of 2021.

"Provided that the provisions of the Consumer Affairs Act existing after the entry into force of the Consumer Affairs Act and other Laws (Amendment) Act, 2021 shall apply to investigations commenced by the Director General (Consumer Affairs) after such entry into force, and to judicial proceedings filed by the Director General (Consumer Affairs) according to article 12(5) of the Consumer Affairs Act at the conclusion of these investigations."; and

(d) immediately after sub-article (6) thereof there shall be added the following new sub-article:

Cap. 378. Act No. XLIV of 2021.

"(7) The provisions of article 12A of the Consumer Affairs Act, existing prior to the entry into force of the Consumer Affairs Act and other Laws (Amendment) Act, 2021, shall continue to apply to any undertaking obtained prior to the said entry into force of the Consumer Affairs Act and other Laws (Amendment) Act, 2021.".

Substitution of the Third Schedule to the principal Act.

22. The Third Schedule to the principal Act shall be substituted by the following new Schedule:

"THIRD SCHEDULE
(ARTICLE 18)

LIST OF EU LEGISLATIVE ACTS FOR THE PURPOSES OF WHICH THE OFFICE FOR CONSUMER AFFAIRS IS THE NATIONAL COMPETENT AUTHORITY

1. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

2. 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.

3. Council 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.

4. 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.

5. 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).

6. 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.

7. 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.

8. Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (only with regard to Articles 1, 2c, 4 to 8 thereof).

9. 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.

10. 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) 2006/2004.

11. Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (with

regard to Article 20 thereof).

12. 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 (with regard to Articles 23 and 24 thereof).

13. 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.

14. 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).

15. 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 (with regard to Articles 10, 11, 13, 14, 15, 16, 17, 18, 21, 22, 23, Chapter 10 and Annexes I and II thereof).".

PART III
Consequential Amendments

Amendments to the Code of Organization and Civil Procedure. Cap. 12.

23. Sub-paragraph (6) of item 4 of Tariff A in Schedule A of the Code of Organization and Civil Procedure shall be substituted by the following new sub-paragraph:

"(6) (a) Notwithstanding the provisions of paragraphs 3 and 4 and in addition to the fees mentioned in paragraph 2, for the cases instituted according to the Consumer Affairs Act and regulations made thereunder, the Competition Act and the Control of Concentrations Regulations, the taxed fee shall be that of six-hundred and fifty euro (€650).

Cap. 378. Cap. 379. S.L. 379.08.

(b) In the case of appeals from judgements delivered according to the Consumer Affairs Act and regulations made thereunder, the Competition Act and the Control of Concentrations Regulations, sub-paragraph (7) of paragraph 3 shall apply *mutatis mutandis*.".

Cap. 378. Cap. 379. S.L. 379.08.

Amendments to the Consumer Claims Tribunal Rules. S.L. 378.01.

24. (1) The Consumer Claims Tribunal Rules shall be amended as follows:

(a) the words "three thousand and four hundred and ninety-four euro and six cents (3,494.06)", wherever they occur , shall be substituted by the words "five thousand euro (€5,000);

(b) the First Schedule thereof shall be substituted by the following new Schedule:

"FIRST SCHEDULE

TARIFF A

Fees payable in the Registry of a Tribunal

1. For filing a notice of claim or a reply together with a notice of counterclaim:

1.1 where the amount claimed does not exceed €580.00.....€7.00

1.2 where the amount claimed does not exceed €1,165 ……€11.50

1.3 where the amount claimed does not exceed €2,330 ……€18.50

1.4 where the amount claimed does not exceed €3,500 ……€23.00

1.5 where the amount claimed exceeds €3,500 …….€27.50

2. For filing a reply to a claim without a notice of counterclaim or a reply to a counterclaim ……€7.00

3. For the filing of any application or any other act including the filing of a technical referee's report ……€2.00

4. For every service ……...€2.50

5. For each definitive decision of a Tribunal

5.1 In respect of the first €1,165 ……€9.50

5.2 In respect of any value in excess of €1,165 …….€18.50

TARIFF B

Fees payable in respect of Publications

1. For the publication of adverts in the Gazette, for every insertion ……...€5.00

A 902

TARIFF C

Fees payable in the Registry of the Court of Appeal

1. For the filing of an application of appeal ……€35.00"; and

(c) in the Second Schedule thereof the number "€3,494.06", wherever it occurs, shall be substituted by the number "€5,000".

Amendments to the Credit Agreements for consumers relating to Immovable Residential Property Regulations. S.L. 378.10.

25. The Credit Agreements for Consumers relating to Immovable Residential Property Regulations shall be amended as follows:

(a) immediately after sub-regulation (6) of regulation 17C thereof there shall be added the following new sub-regulation:

"(7) In accordance with sub-regulation (2)(1)(a) of regulation 3A and in terms of sub-regulations (2) and (3) of this regulation, the Director General shall adopt measures on the requirements regarding arrears and foreclosure which emanate from the EBA Guidelines with the reference EBA/GL/2015/12 as set out in the Fourth Schedule:

Provided that the terms used and defined in these Regulations shall have the same meaning assigned to them in the Guidelines in the Fourth Schedule."; and

(b) immediately after the Third Schedule thereof there shall be added the following new Schedule:

"FOURTH SCHEDULE
(Regulation 17C)

Guidelines on the requirements regarding arrears and foreclosure

Guideline 1: Establishment of policies and procedures

1.1 The creditor should establish, and keep up to date, procedures to detect, as early as possible, consumers going into payment difficulties.

1.2 The creditor should establish, and keep up to date, policies and procedures for the effective handling of and engagement with consumers in payment difficulties. The consumer engagement policy should include that the creditor provides adequate information, for

example, through websites and written materials, and support for consumers in payment difficulties.

1.3 The creditor should provide adequate training for staff dealing with consumers in payment difficulties.

Guideline 2: Engagement with the consumer

2.1 When a consumer goes into payment difficulties, the creditor should work with the consumer to establish why the difficulties have arisen and for the creditor to take appropriate steps.

2.2 Any interaction by the creditor with the consumer in relation to their payment difficulties should respect the consumer's privacy.

2.3 The creditor, as well as any agents acting on behalf of the creditor, should maintain a level of contact and communication with a consumer in payment difficulties that is proportionate to the information requirements, and not excessive.

Guideline 3: Provision of information and assistance to the consumer

3.1 The creditor should communicate clearly and in plain language.

3.2 The creditor should provide support and, at least, the following information to consumers in payment difficulties:

(a) the number of payments either missed or only paid in part;

(b) the total sum of the payment shortfall;

(c) the charges incurred as a result of the payment shortfall;

(d) the importance of the consumer co-operating with the creditor to resolve the situation.

3.3 In cases where the consumer's payment difficulties persist, the creditor should provide the following information to the consumer:

(a) information regarding the consequences of missing payments (e.g. costs, default interest rate, possible loss of property, etc.); and

(b) information about available government/public

schemes or support.

Guideline 4: Resolution process

4.1 The creditor should take into account the individual circumstances of the consumer, the consumer's interests and rights and his/her ability to repay when deciding on which steps or forbearance measures to take. Forbearance measures may include one or both of the following concessions to the consumer:

1. A total or partial refinancing of a credit agreement;

2. A modification of the previous terms and conditions of a credit agreement, which may include among others:

(a) extending the term of the mortgage;

(b) changing the type of the mortgage (such as, changing the type of mortgage from a capital and interest mortgage to an interest only mortgage);

(c) deferring payment of all or part of the instalment repayment for a period;

(d) changing the interest rate;

(e) offering a payment holiday.

Guideline 5: Documentation of dealings with the consumer and retention of records

5.1 The creditor should document the reasons why the option(s) offered to the consumer are appropriate for his/her individual circumstances and should make and retain adequate records of its dealings with the consumer in payment difficulties for a reasonable period of time.".

A 905

Passed by the House of Representatives at Sitting No. 489 of the 14th July, 2021.

CLAUDETTE BUTTIGIEG
Deputy Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

VERŻJONI ELETTRONIKA

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