

Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 20,878, 17 ta' Ġunju, 2022

Taqsimha B

L.N. 176 of 2022

**MALTA FINANCIAL SERVICES AUTHORITY ACT
(CAP. 330)**

**Malta Financial Services Authority Act (Consumer Protection
Cooperation) Regulations, 2022**

IN EXERCISE of the powers conferred by article 20A(1) of the Malta Financial Services Authority Act, the Minister responsible for the regulation of financial services, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

1. (1) The title of these regulations is the Malta Financial Services Authority Act (Consumer Protection Cooperation) Regulations, 2022. Citation and scope.

(2) The purpose of these regulations is to implement Articles 3(1), 3(5), 5 (in part), 9 (in part) and 10 (in part) of the CPC Regulation as herein defined and these regulations shall be interpreted and applied accordingly.

2. (1) In these regulations, unless the context otherwise requires: Interpretation.

"Act" means the Malta Financial Services Authority Act; Cap. 330.

"Authority" shall have the same meaning assigned to it in the Act;

"consumer" shall have the same meaning assigned to it in the CPC Regulation;

"CPC 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, as may be amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"harm to collective interests of consumers" shall have the same meaning assigned to it in the CPC Regulation;

"infringements covered by the CPC Regulation" means intra-Union infringements, widespread infringements and widespread infringements with a Union dimension;

"intra-Union infringement" shall have the same meaning assigned to it in the CPC Regulation;

"online interface" shall have the same meaning assigned to it in the CPC Regulation;

"trader" shall have the same meaning assigned to it in the CPC Regulation;

"Union laws that protect consumers' interests" means:

(i) 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, as may be amended from time to time, and as transposed in national law;

(ii) Articles 15, 18 and 22 of 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, as may be amended from time to time, and as transposed in national law; and

(iii) Articles 3 to 18 and Article 20(2) of 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, as may be amended from time to time, and as transposed in national law;

"widespread infringement" shall have the same meaning as that assigned to it in the CPC Regulation;

"widespread infringement with a Union dimension" shall have the same meaning as that assigned to it in the CPC Regulation;

(2) Words and expressions used in these regulations which are also used in the CPC Regulation, but which are not defined herein, shall have the same meaning assigned to them in the CPC Regulation.

Applicability.

3. These regulations shall apply to intra-Union infringements, widespread infringements and widespread infringements with a Union dimension, even if those infringements have ceased before enforcement starts or is completed.

Competent authority.
Cap. 330.

4. The Malta Financial Services Authority established by the Malta Financial Services Authority Act shall be one of the competent authorities in Malta responsible for the application of the CPC

Regulation.

5. (1) The Authority shall exercise and fulfil all the functions, obligations and powers which are required or may be imposed on competent authorities in accordance with the CPC Regulation and it shall satisfy all the applicable obligations and requirements imposed on competent authorities by the CPC Regulation.

Applicability of
the CPC
Regulation to
the Authority.

(2) Without prejudice to sub-regulation (1), the Authority may, for the better implementation of the CPC Regulation, exercise any of the powers assigned to it under the Act.

6. (1) Without prejudice to any other supervisory, regulatory, enforcement and investigatory powers assigned to the Authority under the Act or any other law, in order to fulfil its duties under the CPC Regulation, the Authority shall have the following investigatory and enforcement powers:

Powers of the
Authority.

(a) the power to access any relevant documents, data or information related to an infringement covered by the CPC Regulation, in any form or format and irrespective of their storage medium, or the place where, they are stored;

(b) the power to require any public authority, body or agency in Malta or any natural 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 the CPC Regulation 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;

(c) the power to carry out necessary on-site inspections, including the power to enter 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;

(d) the power to seize any information, data or documents for as long as the Authority may deem necessary and to the extent necessary for the inspection;

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

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

(g) the power to adopt interim measures to avoid the risk of serious harm to the collective interests of consumers;

(h) the power to seek to obtain or to accept commitments from the trader responsible for the infringement covered by the CPC Regulation to cease that infringement;

(i) the power to receive from the trader, on the trader's initiative, additional remedial commitments for the benefit of consumers that have been affected by the alleged infringement covered by the CPC Regulation, or, where appropriate, to seek to obtain commitments from the trader to offer adequate remedies to the consumers that have been affected by that infringement;

(j) the power to issue a directive in writing requiring the cessation of infringements covered by the CPC Regulation by the trader;

(k) the power to bring about the cessation or the prohibition of infringements covered by the CPC Regulation;

(l) where no other effective means are available to bring about the cessation or the prohibition of the infringement covered by the CPC Regulation and in order to avoid the risk of serious harm to the collective interests of consumers:

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

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

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

register it:

Provided that the powers listed in sub-paragraphs (i), (ii) and (iii) shall include the power to request a third party or other public authority to implement such measures; and

(m) the power to start investigations or proceedings on its own initiative to bring about the cessation or prohibition of infringements covered by the CPC Regulation.

(2) Where applicable, the Authority may consult consumer organisations, trader associations, any designated bodies or other persons concerned, regarding the effectiveness of the proposed commitments in bringing the infringement covered by the CPC Regulation to an end.

(3) The Authority may issue Rules in terms of article 16(2)(a) and article 20A(3) of the Act for the better carrying out of these regulations.

7. (1) Without prejudice to any other supervisory, regulatory, enforcement and investigatory powers of the Authority under the Act or any other law, the Authority shall, by notice in writing and without recourse to a court hearing, impose an administrative penalty which may not exceed the sum of one hundred and fifty thousand euro (€150,000) in respect of breaches by any person of the provisions of the Act or regulations or Rules made thereunder implementing the provisions of the CPC Regulation, for the failure to comply with any decision, order, interim measure, trader's commitment or other measure adopted pursuant to the CPC Regulation, and in respect of infringements by any person covered by the CPC Regulation.

Administrative penalties.

(2) The administrative penalties taken pursuant to sub-regulation (1) shall be effective, proportionate, and dissuasive, in accordance with the requirements of Union laws that protect consumers' interests. In particular, due regard shall be given, as appropriate, to the nature, gravity and duration of the infringement in question.

8. The implementation and the exercise of powers set out in these regulations in application of the CPC Regulation shall be proportionate and shall comply with Union and Maltese law, including with applicable procedural safeguards and with the principles of the Charter of Fundamental Rights of the European Union. The investigation and enforcement measures adopted in application of the CPC Regulation shall be appropriate to the nature and the overall actual or potential harm of the infringement of Union laws that protect

Exercise of powers.

consumers' interests.

Publication.

9. The Authority may publish any final decision, trader's commitments or orders adopted pursuant to these regulations and, or the CPC Regulation. The publication referred to in this regulation shall include publication of the identity of the trader responsible for an infringement covered by the CPC Regulation.

Appeals.

10. A right of appeal to the Financial Services Tribunal shall lie from the decisions which the Authority shall take under these regulations and, or the CPC Regulation and the provisions of article 21 of the Act shall apply *mutatis mutandis*.
