

# EU Consumer Law Acquis Compendium

## Legislation

Malta (MT) Nr. 1



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### Full name and/or number of the statute (in original language):

Att dwar Kuntratti fuq l-Ghadba tal-Bieb

### Translation of the name:

Doorstep Contracts Act

### Reference in Official Journal (if appropriate):

Law of Malta 1987, no. 317

### Date of coming into force:

05.03.1987

### Subsequent amendments:

Act VI of 2011 – Part XXI entitled “Amendments to the Doorstep Contracts Act”

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### Text:

CHAPTER 317

DOORSTEP CONTRACTS ACT

To regulate the activities of door-to-door sellers.

11th February, 1987;

15th March, 1987

ACT VII of 1987, as amended by Acts XXVIII of 1994 and XXVI of 2000;

Legal Notice 424 of 2007; and Acts II of 2008, XXIII of 2009 and VI of

2011.

1. The short title of this Act is the Doorstep Contracts Act.

2. In this Act, unless the context otherwise requires -

"business premises" include the premises or any other place

where or from which a trader regularly carries on business activity,

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and include stalls at fairs and markets;

"consumer" means a person who in transactions covered by this Act acts otherwise than in a commercial or professional capacity;

"Council" means the Consumer Affairs Council established by the Consumers Affairs Act;

"Director General (Consumer Affairs)" means the Director General as appointed by article 16 of the Malta Competition and Consumer Affairs Authority Act;

"doorstep contract" means a contract for the provision or supply of goods or services to a consumer by a door-to-door seller acting either on his own behalf or on behalf of a trader, which contract has been negotiated at the consumer's home or place of work or at any other place or premises away from the business premises of the door-to-door seller or of the trader on whose behalf he is acting, including contracts concluded during an excursion organised by the trader away from his business premises, or during a visit by a trader to the consumer's home or to that of another consumer, or to the consumer's place of work;

"door-to-door seller" means a person who offers the provision or supply of any type of goods or services by means of a doorstep contract, whether the offer is unsolicited by the person to whom it is made, or is solicited by the latter person in response to any advertisement, but does not include vendors of foodstuffs and drinks who sell their goods from door-to-door;

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"goods" include any article or thing, whether tangible or intangible, which may form the object of trade;

"Member State" means a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on the 2nd May, 1992 as amended by the Protocol signed at Brussels on the 17th March, 1993 and as amended by any subsequent acts;

"Minister" means the Minister responsible for consumer affairs;

"prescribe" means prescribed by regulations under this Act;

"services" shall have the meaning assigned to it under the Consumer Affairs Act, but shall exclude contracts of insurance;

"trader" shall have the meaning assigned to it by the Consumer Affairs Act, and includes any person acting in the name, on behalf or in the interest of a trader or under the trader's direction, and further includes a person who is acting in furtherance of a professional activity, and, unless the context otherwise requires, includes also the door-to-door seller.

3. This Act shall not apply to -

(a) contracts which have been negotiated exclusively at the initiative of the consumer where the contract exclusively concerns the goods or services regarding which the consumer requested the visit of the trader:

Provided that the ordering of catalogues, patterns,

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samples and similar items, a request by the consumer for a visit or demonstration, and participation in an event organised by the trader, shall not be considered as initiating negotiations;

(b) contracts which have been negotiated solely in writing, not being doorstep contracts;

(c) contracts which are concluded before a court, notary or other person who is under a duty to inform both contracting parties of their rights and obligations;

(d) contracts relating to immovable property or any rights thereto;

(e) contracts under which the overall price payable by the consumer does not exceed forty-six euro and fifty-nine cents (46.59):

Provided that where one or more contracts provide for a continuous supply and the whole value of the contract is or may be made to exceed forty-six euro and fifty-nine cents (46.59), such contract or contracts shall, notwithstanding the value of each individual separate consignment, be deemed to be a contract under which the overall price payable by the consumer exceeds forty-six euro and fifty-nine cents (46.59);

(f) contracts relating to the sale of such goods as the Minister may prescribe.

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4. (Deleted by Act XXIII. 2009.46)

4. (1) A person who calls at the home or place of work of a consumer for the purpose of negotiating a doorstep contract or for an incidental or related purpose shall leave that place at the request of the consumer.

(2) Without prejudice to the provisions of Title I of Part VII of the Consumer Affairs Act, any person who fails to leave such home or place of work when so requested shall be guilty of an offence against this Act and shall on conviction be liable to a fine (multa) not exceeding one thousand, one hundred and sixty-four euro and sixty-seven cents (€1,164.67).

5. (Deleted by Act XXIII. 2009.46)

6. (1) No doorstep contract made by or through a door-to-door seller shall be valid unless it is concluded by a private writing which may be cancelled as is provided in article 8.

(2) One copy of the private writing shall be retained by the door-to-door seller and another copy shall be retained by the consumer. A cancellation form shall be attached to the private writing retained by the consumer.

6A. (1) Every licensed door-to-door seller has to provide to the consumer free of charge, and of his own initiative the following information:

(a) his name, legal status and whether he is operating as a commercial partnership, and what type of commercial partnership, the address of the commercial premises in

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the Member State in which he is established and details enabling him to be contacted rapidly and communicated with directly and, as the case may be, by electronic means;

(b) if he is registered as a commercial partnership under the Companies Act or under the Commercial Partnerships Ordinance under article 5 of the Companies Act, the number of registration and all information relating to article 6 of the Companies Act;

(c) the particulars of the relevant competent authority issuing the license of a door-to-door seller or the single point of contact;

(d) where the provider exercises an activity which is subject to VAT, the identification number referred to in Article 22(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax;

(e) in the case of the regulated professions, any professional body or similar institution with which the door-to-door seller is registered, the professional title and the Member State in which that title has been granted;

(f) the general conditions and clauses used by the provider.

(2) In addition to the provisions of sub-article (1), every doorto-door seller duly licensed has to provide free of charge and on his own initiative, to the consumer, the following information:

(a) the existence of contractual clauses, if any, used by the provider concerning the law applicable to the contract and, or the competent courts;

(b) the existence of an after-sales guarantee, if any, not imposed by law;

(c) the price of the service, where a price is predetermined by the provider for a given type of service;

(d) the main features of the service, if not already

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apparent from the context.

(3) All information referred to in sub-article (1) according to the provider's preference -

(a) has to be easily accessible to the consumer at the place where the service is provided or the contract concluded;

(b) must be easily accessed by the recipient electronically by means of an address supplied by the provider, and;

(c) must appear in any information documents, supplied to the consumer by the door-to-door seller, which set out a detailed description of the service he provides.

6B. (1) Every door-to-door seller at the consumer's request has to provide the following additional information:

(a) where the price is not pre-determined by the provider for a given type of service, the price of the service or, if an exact price cannot be given, the method for calculating the price so that it can be checked by the recipient, or a sufficiently detailed estimate;

(b) as regards the regulated professions, a reference to the professional rules applicable in the Member State of establishment and how to access them;

(c) information on the multi-disciplinary activities and partnerships which are directly linked to the service in question and on the measures taken to avoid conflicts of interest. That information shall be included in any information document in which door-to-door sellers give a detailed description of their services;

(d) any codes of conduct to which the provider is subject and the address at which these codes may be consulted by electronic means, specifying the language version available;

(e) where a provider is a member of a trade association or professional body which provides for recourse to a non-judicial means of dispute settlement, information



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in this respect. The provider shall specify how to access detailed information on the characteristics of, and conditions for, the use of non-judicial means of dispute settlement.

(2) Any information as required in sub-article (1) is to be made available or communicated in a clear and unambiguous manner, and in good time before conclusion of the doorstep contract.

7. A private writing shall, on pain of nullity, contain -

- (a) the date when and place where it is signed;
- (b) the name and address of the consumer;
- (c) the name of the door-to-door seller and the number of his licence;
- (d) the permanent address of the place of trade of the door-to-door seller or the person by whom he is employed;
- (e) a description of the goods or services to which the contract refers;
- (f) the price for which the goods or services were to be supplied, and the terms of payment, including full details regarding interests and any other charges;
- (g) the time stipulated for the supply of the goods or services, which time shall in no case exceed sixty days from the date of the private agreement;
- (h) a clause printed in clear, bold and highlighted type that



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the consumer has the right to cancel the private writing in accordance with the provisions of article 8;

(i) such other additional conditions or particulars as the Council may require from time to time; and

(j) such other conditions as the Minister may from time to time prescribe in order to ensure a proper description of the goods and that no undue pressure is exerted on the consumer.

8. (1) A doorstep contract shall not be binding and conclusive if it is cancelled by the consumer as provided in this article: provided that cancellation is made within fifteen days from the date of the private writing, or within such longer period as may be stipulated in the private writing.

(2) Cancellation of a doorstep contract may be made in any manner provided the intention is substantially conveyed by the consumer to the door-to-door seller or to the trader on whose behalf he is acting. Cancellation may be effected by word of mouth, by means of telephone or telefax message, or by the delivery either by hand or by ordinary or registered post at the permanent address of the door-to-door seller or trader of a notice of cancellation form signed by the consumer or by a person duly authorised to represent him.

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(3) A cancellation form in the form set out in the Schedule may be used by a consumer wishing to cancel a doorstep contract. A copy of such a cancellation form shall in all cases be attached to the copy of the private agreement retained by the consumer. If the consumer wishes to avail himself of the cancellation form he may sign such form and deliver it to the door-to-door seller or to the trader on whose behalf is acting.

(4) It shall be the obligation of a door-to-door seller who calls on a consumer to forthwith inform him of his status as a door-to-door seller, of the purpose of his call, to properly identify himself, and to properly explain to the consumer his rights of cancellation arising under this article and of the possibility to use the cancellation form.

9. Except for a payment of a deposit not exceeding ten per centum of the price of the goods being the subject of the doorstep contract, which deposit shall not be payable before the expiration of the time within which it may be cancelled in accordance with article 8, the door-to-door seller or the trader on whose behalf the door-to-door seller has concluded the doorstep contract, shall not require the consumer to pay any part of the price before the delivery of the goods, and where the goods are delivered in parts, no payment shall be demanded except as represents the price of the part delivered.

10. (1) Where a doorstep contract has not been cancelled in accordance with article 8, the consumer shall not have a right to cancel the doorstep contract without just cause, unless such right is

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stipulated in the private writing.

(2) The consumer shall have the right to cancel a doorstep contract for a just cause, or because of the violation by the door-todoor seller of any of the provisions of article 9.

11. Any clause in the private writing which -

- (a) requires the consumer to pay any form of compensation if he exercises his right to cancel the doorstep contract, or
  - (b) provides that any dispute arising therefrom shall be settled otherwise than by the competent court in Malta, or
  - (c) purports to remove or reduce any of the rights given to the consumer by any of the provisions of this Act, or to limit or remove the competence of local courts or tribunals,
- shall be void.

12. In any dispute as to whether -

- (a) a doorstep contract has been negotiated exclusively at the initiative of the consumer, or
- (b) a doorstep contract has been negotiated solely in writing, or
- (c) the provisions of this Act have been complied with in the conclusion of the doorstep contract, or
- (d) the allegation that the right of cancellation had not

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been exercised by the consumer within the period established under article 8, the burden of proof shall lie with the trader.

13. Notwithstanding the provisions of this or any other law, the consumer shall not be barred from bringing an action or pleading a defence under this Act on the ground of a false or incorrect date of conclusion of the private writing or its cancellation, even where such falsity or incorrectness has been made by him or with his knowledge and consent.

14. (1) A contract of sale concluded before the coming into force of this Act, being a contract of sale to which the provisions of this Act are applicable, shall not be enforceable against the consumer unless there has been made the actual delivery of the goods sold and the payment of the price of the sale, or, if the benefit of payment by instalments has been granted to the consumer, at least twenty-five per cent of the purchase price has been paid:

Provided that the trader may in such cases recover any expenses that he may have actually incurred under the contract.

(2) When a consumer wishes to keep in effect a contract which in accordance with the provisions of subarticle (1) is not enforceable by the trader, he shall within one month from the coming into force of this Act confirm the same by signing and delivering to the trader a declaration confirming the contract, and thereupon such contract shall be enforceable by either party.

14A. Any person who fails to comply with the provisions of this Act other than article 4, which failure constitutes an infringement against this Act, shall be liable to an administrative fine imposed by the Director General (Consumer Affairs) in terms of provisions of the Consumer Affairs Act of not less than four hundred and

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sixty-five euro and eighty-seven cents (€465.87) and not exceeding four thousand, six hundred and fifty-eight euro and seventy-five cents (€4,658.75).

14B. The prosecution of an offence or the initiation of administrative proceedings for an infringement of a provision of this Act shall be prescribed by the lapse of three years from the date on which the offence or infringement is alleged to have been committed.

15. The Minister may make regulations for better putting into effect any of the provisions of this Act, and without prejudice to the generality of the foregoing may by such regulations prescribe:

- (a) the form in which any contract or cancellation or any clause thereof shall be made, whether generally or in respect of any class of goods;
- (b) the means of identification of any door-to-door seller licensed under this Act;
- (c) such goods or services that may not be sold by means of a doorstep contract;
- (d) any other matter which may be prescribed under this Act.

15A. The purpose of this Act is partly to implement the provisions of Council Directive 85/577/EEC of the 20th December, 1985 to protect the consumer in respect of contracts negotiated away from business premises and the respective provisions of this Act shall be applied and interpreted accordingly.