

**I. ADMINISTRATIVE ENFORCEMENT**

**Which administrative mechanisms are available to enforce the Directives?**

In Malta, the relevant administrative mechanisms to enforce Directive 93/13/EEC (unfair contract terms), Directive 1999/44/EC (sale of goods and guarantees), Directive 2005/29/EC (unfair commercial practices), Directive 98/6/EC (price indications) and Directive 2011/83/EU (consumer rights) are found in the Consumer Affairs Act (Cap. 378 of the laws of Malta) (hereinafter collectively referred to as “the Directives”). All the Directives were transposed into Maltese law by virtue of the said Act, save for Directive 2011/83/EU and Directive 98/6/EC, which were transposed in the Consumer Rights Regulations (Legal Notice 439 of 2013 as subsequently amended) and the Consumer Affairs Act (Price Indication) Regulations (Legal Notice 283 of 2002 as subsequently amended) enacted under the Consumer Affairs Act.

Article 16(1) of the Malta Competition and Consumer Affairs Authority Act (Cap. 510 of the laws of Malta, hereinafter referred to as the ‘MCCAA Act’) establishes the Office for Consumer Affairs which is headed by the Director General (Consumer Affairs). The Director General is responsible for the administration and enforcement of the Consumer Affairs Act (Consumer Affairs Act, Article 3). In terms of article 12A of the Consumer Affairs Act, the Director General has the power to carry out investigations of breaches of the Act and any regulations made thereunder. Investigations are carried out in terms of Article 14A of the Act; should a breach of the law result, the Director General would issue a decision finding an infringement, giving reasons therefor. The Director General may also caution the trader and seek an undertaking in writing (Article 12). When the investigations relate to a criminal offence under the Act or any regulations made thereunder, criminal proceedings may only be instituted at the instance of the Director General.

The Director General may order interim measures to remedy a situation in advance of reaching a final decision (Consumer Affairs Act, Article 14A); interim measures are issued in cases of urgency due to the risk of immediate and serious harm to the collective interests of consumers. Such an order is issued on the basis of a prima facie finding of an infringement.

The Director General may also issue a compliance order (Consumer Affairs Act, Article 94), which comes into force with immediate effect (Article 96) (see below).

The Director General is empowered to enter and search premises (except residential premises), make any inspection, conduct any test and take any goods, as well as take any books, documents or records. He may also request information in any manner of any person. This power is reaffirmed in the Consumer Affairs Act (Price Indication) Regulations (Legal Notice 283 of 2002 as subsequently amended), which transpose Directive 98/6/EC, which specify that traders are to produce to the Director General information required by the said Director General. The Director General is considered the competent authority under the Consumer Protection Co-Operation Regulation, and may therefore request, receive, disclose and exchange information. Finally the Director General may impose administrative fines (see below).

Decisions, orders or measures of the Director General, as well as administrative fines, can be appealed from to the Competition and Consumer Appeals Tribunal, established by the MCCAA Act (Consumer Affairs Act, Articles 110B and 110C). Any person aggrieved by the decision may appeal, although a person’s juridical interest in impugning the decision must be explained. There then lies a further right of appeal on point of law or on grounds of natural justice to the Court of Appeal (Consumer Affairs Act, Article 110F).

	<p>The Protection of Consumers (Timeshare, long-term holiday product, resale and exchange contracts) Regulations (Legal Notice 109 of 2011) and Package Travel, Package Holidays and Package Tours Regulations (Legal Notice 157 of 2000 as subsequently amended), which transpose the provisions of Directive 90/314/EEC and Directive 2008/122/EC respectively), were enacted under the Malta Travel and Tourism Services Act (Cap. 409 of the laws of Malta). Both Regulations envisage criminal sanctions against those in breach of the provisions of these Regulations. However the Director of the Enforcement Directorate of the Malta Tourism Authority is empowered to keep the persons operating in the timeshare business, and their practices, under general review, as well as carry out investigations where proper in the public interest and request the relevant persons to discontinue or refrain from any practical which are contrary to the obligations imposed on them by the Regulations (Protection of Consumers (Timeshare, long-term holiday product, resale and exchange contracts) Regulations, regulation 4). Moreover, the Protection of Consumers (Timeshare, long-term holiday product, resale and exchange contracts) Regulations empower authorised officers of the Malta Tourism Authority to require traders to give any information and to summon traders to give the officer any information and produce records in their possession, whilst the Package Travel, Package Holidays and Package Tours Regulations empower authorised officers to inspect goods and enter premises (except dwellings), produce books and documents relating to the business activity and take copies, to seize and detain goods and documents, to require persons engaged in the business to give any other information, to summon any person employed or engaged in the business to give information. In the case of the Package Travel, Package Holidays and Package Tours Regulations where the Malta Tourism Authority is satisfied that the organiser has repeatedly contravened or failed to comply with the Regulations, it may suspend or decline to renew the license of the organiser to operate as a travel agent for a period not exceeding one year.</p>
<p><b>Who can file administrative complaints? Can investigations be initiated ex officio?</b></p>	<p>With respect to the provisions transposing the Directives into Maltese law, the Director General (Competition) may carry out investigations either ex officio or upon the receipt of a complaint (the Consumer Affairs Act uses the term 'a reasonable allegation in writing of a breach of the Act and any regulations made thereunder') (Article 12A).</p> <p>The Consumer Affairs Act does not specify who may make a complaint. As a result, complaints can generally be made by any natural or legal person. This serves mainly to bring the matter in question to the attention of the Director General (Consumer Affairs), who would then commence an investigation.</p> <p>In terms of Article 12B of the Consumer Affairs Act, a qualified entity (being a registered consumer association or similar entity) may make a complaint to the Director General where the interests of consumers are being harmed.</p> <p>Moreover, registered consumer association may make reports or complaints to the relevant authorities in their own name (Consumer Affairs Act, Article 37).</p>
<p><b>Do any specific procedural requirements apply to filing</b></p>	<p>We are not aware of any specific procedural requirements for filing administrative complaints with the Director General (Consumer Affairs), other than the complaint having to be in writing.</p>

<b>administrative complaints?</b>	
<b>Do the administrative authorities have an obligation to investigate the complaint?</b>	<p>It is unclear whether the Office for Consumer Affairs has such an obligation.</p> <p>The Consumer Affairs Act does specify that the Director General (Consumer Affairs) has the power to carry out investigations upon a reasonable allegation in writing of a breach of the law (Article 12A). Moreover, Article 17(1)(c) of the MCCA Act specifies that one of the functions of the Office is to receive and investigate complaints from consumers relative to the supply of goods and services and to take such action as in its power to redress any justified grievance that may come to its notice.</p> <p>However, Article 17(3) of the MCCA Act then clarifies that nothing in that Act or any other law is to be construed as giving any consumer a right to require the Director General (Consumer Affairs) to act on his behalf and in his interest in any particular matter or dispute with any trader or supplier of services before any court, tribunal or arbiter.</p>
<b>Are there any specific requirements regarding the provision of evidence to the competent authorities?</b>	<p>With regard to the provisions transposing the Directives into Maltese law, the Consumer Affairs Act does not contain specific requirements regarding the provision of evidence to the competent authorities, however failure to furnish information as requested, or providing false or misleading information constitutes an offence against the Consumer Affairs Act which attracts a fine (<i>multa</i>) of between EUR 470 and EUR 47,000.</p> <p>Moreover, the Director General may, when carrying out an investigation in terms of Article 14A of the Consumer Affairs Act, require the person concerned to furnish evidence as to the accuracy of factual claims in relation to a commercial practice if, taking into account the legitimate interest of the person concerned and any other party to the proceedings, such a requirement appears appropriate on the basis of the circumstances of the particular case; and consider factual claims as inaccurate if the evidence is not furnished or is deemed insufficient by the Director General.</p>
<b>II. ENFORCEMENT THROUGH COURT ACTION</b>	
<b>Which court actions are available to enforce the Directives?</b>	<p>In relation to the Directives, the Consumer Affairs Act provides that consumers may commence an action in front of the Consumer Claims Tribunal. This Tribunal has jurisdiction to hear and determine claims by consumers against traders where the value of the claim, exclusive of interests and costs, is less than EUR 3,500 and where the claim relates to, arises out of or concerns the purchase or hire of goods by a consumer or the provisions of services by a trader to a consumer. Claims may take the form of an action for damages or an action requesting specific performance (e.g. request for trader to comply with the legal guarantee). There is the possibility of an appeal from the decision of the Tribunal to the Court of Appeal (inferior jurisdiction). Before a claim can be presented in front of the Consumer Claims Tribunal, the claim must be referred by the consumer to either the Director General (Consumer Affairs) or a registered consumer association who try to bring to parties to an agreement. If no agreement is reached within 15 working days, the consumer may present its claim before the tribunal.</p> <p>Notwithstanding the jurisdiction of the Consumer Claims Tribunal, the consumer is free to bring an action in the ordinary civil courts, and would</p>

	<p>have to do so if the value of his claim is greater than EUR 3,500. A consumer or other party may possibly also bring an action for damages based on the general principles of tort contained in the Civil Code (Cap. 16 of the laws of Malta) if that applicant can prove that damage resulted from a breach of any of the Directives.</p> <p>Moreover, for actions in relation to the provisions transposing the Directives may be brought through collective proceedings in front of the Civil Court, First Hall, in terms of the Collective Proceedings Act (Cap. 520 of the laws of Malta).</p> <p>A particular commercial court action is required in relation to the provisions transposing Directive 2006/114/EC (misleading and comparative advertising). This action is regulated by Article 37 of the Commercial Code (Cap. 13 of the laws of Malta). Further detail on this action is found below.</p> <p>Criminal proceedings, with the Executive Police prosecuting, would be required in the case of criminal offence resulting from non-compliance with the Protection of Consumers (Timeshare, long-term holiday product, resale and exchange contracts) Regulations (Directive 90/314/EEC), the Package Travel, Package Holidays and Package Tours Regulations (Directive 2008/122/EC), and the Consumer Affairs Act (Price Indication) Regulations (Directive 98/6/EC).</p>
<p><b>Who can start a court action?</b></p>	<p>Actions in front of the Consumer Claims Tribunal can only be instituted by consumers. Trades can only make a counter-claim. Private actions based on a breach of Directive 93/13/EEC, Directive 1999/44/EC, Directive 2005/29/EC, and Directive 2011/83/EU can generally only be made by consumers anyway, even if instituted in the civil courts, since as a general principle of law a claimant has to have interest in the action which is direct, actual and real.</p> <p>Claims in relation to Directive 2006/114/EC based on Article 37 of the Commercial Code can only be made by injured traders.</p> <p>Criminal actions in terms of the Protection of Consumers (Timeshare, long-term holiday product, resale and exchange contracts) Regulations, the Package Travel, Package Holidays and Package Tours Regulations, and the Consumer Affairs Act (Price Indication) Regulations are brought by the Executive Police in front of the Court of Magistrates as a court of criminal judicature.</p> <p>A general action for damages in front of the civil courts can be made by any person who shows he has suffered damage (and who therefore has legal interest in the claim).</p> <p>In relation to breaches of the Consumer Affairs Act and the regulations made thereunder, it is possible to commence collective proceedings. These are regulated by the Collective Proceedings Act (Cap. 520 of the laws of Malta). 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 (Article 3). Collective proceedings are instituted in the Civil Court, First Hall and the plaintiff is to request that the Court declare that the collective proceedings procedure is the most appropriate procedure in the circumstances (Article 5). After a pre-trial hearing, the Court has to decide whether to issue a decree ordering the continuation of proceedings or to stay proceedings for the parties to attempt a compromise. In the former case, the plaintiff would be confirmed as class representative. Collective</p>

	<p>proceedings are opt-in, whereby third parties who wish to be class members are given a period of time by the Court within which to opt in. For proceedings to be appropriate as collective proceedings, the Court must be satisfied by the class representative that the claims are brought on behalf of an identified class of two or more persons and raise common issues, as well that the proceedings are the most appropriate means for the fair and efficient resolution of the common issues (Article 9). The Court is to approve a registered consumer association or a constituted body to act as a class representative if that representative would fairly and adequately act in the interests of class member and does not have a material interest that is in conflict with the interests of the class members; however where actions are brought by registered consumer associations, only its members can be class members (Article 12(1)). Other plaintiff have to have a claim which falls within the proposed proceedings, would fairly and adequately act in the interests of the class members and does not have a material interest in conflict with the interests of the class members, in order to be approved as a class representative (Article 12(2)).</p>
<p><b>Can court actions be initiated by competitors?</b></p>	<p>Court actions in relation to the provisions transposing Directive 2006/114/EC (misleading and comparative advertising) can <u>only</u> be initiated by competitors. The provisions on misleading and comparative advertising were implemented in the Commercial Code, in the section dealing with the limits of competition.</p> <p>As a result, an injured trader (the competitor) may institute a court action, requesting damages and interest or a penalty of between EUR 465,87 and EUR 4,658,75. The injured trader may also demand that everything done contrary to the said provisions be destroyed, or that any other remedy capable of being applied be applied.</p> <p>In theory, nothing stops competitors from commencing an action based on the other provisions of Maltese law transposing the other Directives, however such an action would have to be based on the general principles of tort (contained in the Civil Code, Cap. 16 of the laws of Malta), whereby the competitor would have to show that it suffered damage as a result of the unlawful conduct of the trader.</p>
<p><b>Can the case be handled through an accelerated procedure?</b></p>	<p>The Consumer Claims Tribunal is obliged to ensure that a case is decided as far as is reasonably possible on the same day of the hearing (Consumer Affairs Act, Article 23).</p> <p>Otherwise, there are no accelerated procedures which are specific for consumer legislation. There are however two accelerated procedures which apply for all civil actions.</p> <p>The first is a special procedure for the recovery of a debt that is certain, liquidated and due not consisting in the performance of an act (Code of Organisation and Civil Procedure, Article 166A). The debt cannot exceed the sum of EUR 25,000. The creditor can proceed by filing a judicial letter which is served upon the debtor (who must be present in Malta), which letter is to clearly state the cause of the claim, the reasons why the claim should be upheld and a statement of facts in support of the claim, as well as an intimation to the debtor that should he not reply within 30 days from service, the letter shall constitute an executive title. Where the debtor does not oppose the claim or where the debtor only opposes the claim in part, the judicial letter shall constitute an executive title, upon registration with the Registrar of the Court (Code of Organisation and Civil Procedure, Article 166B).</p> <p>The second is a special summary procedure that can be used in front of the civil courts of superior jurisdiction for the recovery of a debt, certain,</p>

	<p>liquidated and due, which does not consist in the performance of an act (Code of Organisation and Civil Procedure, Article 167). In such cases, the plaintiff may request that the court give judgment allowing his demand without proceeding to trial, stating also that there is no defence to the action. If the defendant fails to appear on the sworn application or does not impugn the proceedings taken by plaintiff or does not satisfy the court that he has a <i>prima facie</i> defence, the court will give judgment allowing the plaintiff's claim (Code of Organisation and Civil Procedure, Article 170).</p>
<p><b>Are there any specific requirements regarding the provision of evidence to the court?</b></p>	<p>Article 13(3) of the Consumer Affairs Act provides that should the evidence of the Director General (Consumer Affairs) or of the official conducting the prosecution be required as part of the case of the prosecution he shall be heard before any other witness unless the necessity of giving evidence results later in the proceedings. This provision applies therefore for the provisions of Maltese law transposing the Directives.</p> <p>In all other respects, and for all the Directives, the procedure for providing evidence to the Court would be regulated by the general provisions on evidence contained the Maltese Code of Organisation and Civil Procedure (Cap. 12 of the laws of Malta).</p> <p>However, the Consumer Claims Tribunal may inform itself in any manner thought fit and is not bound by the rules of best evidence or the rules relative to hearsay evidence if satisfied that the evidence before it is sufficiently reliable to reach a conclusion on the case (Consumer Affairs Act, Article 23(2)(b)). It should also refrain from appointing technical experts (Article 23(2)(c)). Evidence however is to be delivered on oath (Article 23(2)(f)).</p> <p>Finally, in terms of article 104A(2) of the Consumer Affairs Act, the Director General may produce as evidence before any court or tribunal any such information, including documents, findings, statements, certified true copies or intelligence received from competent authorities terms of the Consumer Protection Co-operation Regulation and the Data Protection Act.</p>
<p><b>Are there specific procedural reliefs for consumers or consumer associations?</b></p>	<p>Generally, the applicable fees and court expenses are those indicated in the Code of Organisation and Civil Procedure (Cap. 12 of the laws of Malta). The relevant Minister may, together with the Minister responsible for justice, enact Regulations which lay down the rates of costs in proceedings before the Consumer Claims Tribunal and establishing registry fees, however no such Regulations have as yet been enacted.</p> <p>In terms of the Collective Proceedings Act, registered consumer associations which file collective proceedings are exempt from the payment of Court registry fees (Article 21(4)).</p>
<p><b>III. SANCTIONS</b></p>	
<p><b>What are the possible civil sanctions and remedies for the infringement of the provisions of the Directives?</b></p>	<p>With respect to the provisions of Maltese law transposing Directive 93/13/EEC (unfair contract terms), Directive 1999/44/EC (sale of goods and guarantees), Directive 2005/29/EC (unfair commercial practices), Directive 2011/83/EU (consumer rights) and arguably Directive 98/6/EC (price indications), the Consumer Affairs Tribunal may hear claims of up to EUR 3,500, and may therefore award damages of up to that amount. It may also order the trader to pay a sum of between EUR 35 and EUR 500 as moral damages for any pain, distress, anxiety and</p>

	<p>inconvenience.</p> <p>Should the claim exceed EUR 3,500, the case would have to be instituted in front of the civil courts; in such event, the possible civil remedy would be the award of damages and/or loss of profits in terms of the Civil Code (Cap. 16 of the laws of Malta). The same applies in the unlikely event of an action for damages based on a breach of consumer legislation, which is either not instituted by consumers or which is instituted on the basis of a breach of the provisions of the Protection of Consumers (Timeshare, long-term holiday product, resale and exchange contracts) Regulations or the Package Travel, Package Holidays and Package Tours Regulations, which transpose the provisions of Directive 90/314/EEC and Directive 2008/122/EC respectively). A consumer might possibly also commence an action in the civil courts asking for a declaration that the contract is null and void. A contract can be declared null and void in terms of general civil law if the parties did not have capacity to contract, if consent was vitiated, if the consideration is unlawful and if the thing contracted upon could not be the subject of a contract (Civil Code, Article 966). Therefore, a consumer can demand that a contract be declared null and void if its consideration is contrary to consumer legislation.</p> <p>It is relevant to note that by operation of law contracts which contain unfair contract terms are not be binding on the consumer unless the contract is capable of continuing in existence without the unfair term (Consumer Affairs Act, Article 46). An unfair term is deemed never to have been inserted in a contract (Consumer Affairs Act, Article 44(1)).</p> <p>Participants in a pyramid promotional schemes (considered an unfair commercial practice), are entitled, within two years of their making the last payment, to institute an action before the ordinary courts to demand a full refund of any monies paid by them into the scheme (Consumer Affairs Act, Article 107B).</p> <p>With respect to the provisions transposing Directive 2006/114/EC (misleading and comparative advertising) the injured trader (the person filing the court action) may be awarded (at his request) either damages and interest or a penalty of between EUR 465.87 and EUR 4,658.75. The injured trader may also demand that everything done contrary to the said provisions be destroyed, or that any other remedy capable of being applied be applied.</p>
<p><b>What are the possible criminal sanctions for the infringement of the Directives' provisions?</b></p>	<p>In the case of the Consumer Affairs Act (Price Indication) Regulations, which transpose Directive 98/6/EC, the Regulations specify that any person who contravenes or fails to comply with any of the provisions of the Regulations is guilty of an offence, and on conviction would be liable to a fine of between EUR 116.47 and EUR 1,164.69, in the case of a first conviction; and in the case of a second or subsequent conviction, to the same amount of fine as well as the suspension of any license or other authorisation. The court may also order publication in daily newspapers of any judgment or a statement or summary thereof, in the case of second or subsequent convictions.</p> <p>In the event of an infringement of the provisions of the Protection of Consumers (Timeshare, long-term holiday product, resale and exchange contracts) Regulations, which transpose the provisions of Directive 90/314/EEC, the Regulations specify that any person who contravenes the provisions on advertising, pre-contractual information requirements,</p>

	<p>the contractual requirements and advance payments contained in the Regulations would be guilty of a criminal offence and would be liable to a fine (<i>multa</i>) not exceeding EUR 2,329 in respect of any contravention. In the case of a breach of the provisions on advance payments, the offender shall be ordered to refund the consumer.</p> <p>In the event of an infringement of the provisions of the Package Travel, Package Holidays and Package Tours Regulations, which transpose the provisions of Directive 2008/122/EC, any person who contravenes or fails to comply with the Regulations would have committed a criminal offence and would be liable to a fine (<i>multa</i>) of between EUR 232.94 and EUR 2,329.37, and to another fine (<i>multa</i>) of between EUR 58.23 and EUR 116.47 for each day that the offence continues.</p> <p>The setting of the fines in these cases is at the discretion of the Court of Magistrates.</p>
<p><b>What are the possible administrative sanctions for the infringement of the Directives' provisions?</b></p>	<p>There are administrative sanctions with respect to the provisions of Maltese law transposing Directive 93/13/EEC (unfair contract terms), Directive 1999/44/EC (sale of goods and guarantees), Directive 2005/29/EC (unfair commercial practices) and Directive 2011/83/EU (consumer rights).</p> <p>The Director General may issue a compliance order on a person requiring: the deletion or alteration of terms in a consumer contract, which are considered to be unfair; the incorporation of terms in contracts which are considered necessary; the discontinuation of unfair commercial practices; the taking of any measures specified in a compliance order; the ceasing and desisting from committing an offence or an infringement against the Consumer Affairs Act or any relevant regulations (Consumer Affairs Act, Article 94). Compliance orders may be issued at the request of a 'qualified entity' (which includes registered consumer associations and designated voluntary organisation, among others) if it has tried to achieve the cessation of the infringement in consultation with the defendant and this was not achieved within two weeks of the request (Consumer Affairs Act, Article 94).</p> <p>The Director General may also impose administrative fines of between EUR 470 (EUR 500 in the case of the Consumer Rights Regulations) and EUR 47.000, including a daily penalty of EUR 230 for non-compliance with compliance order.</p> <p>In the case of unfair commercial practices, the basic amount of the fine has to be EUR 2.350; the Second Schedule to the Consumer Affairs Act contains a number of aggravating circumstances where the fine would be increased as well as mitigating circumstances where the fine would be decreased. The fine may be higher in view of the gravity and duration and of the infringement, and/or the amount of gains improperly made as a result of the infringement. If the infringement is listed in the First Schedule to the Act, or if the practice is the principal means by which the trader runs or operates his business or if the practice is an aggressive commercial practice accompanied by timing/location/nature/persistence, the use of threatening or abusive language or behaviour, the exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer's judgement of which the trader is aware to influence the consumer's decision with regard to the product, any onerous or disproportionate non-contractual barriers imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader, or any threat to take any action that cannot legally be</p>

	<p>taken, the basic amount is to be increase by a sum between €1,750 and €4,650; in the case of a second or subsequent infringement or if the practice of scheme specifically targets vulnerable consumers, the basic amount is increase by € 2,350. The basic amount may be decreased where the person concerned provides evidence that s/he terminated the unfair commercial practice as soon as the investigation started (reduction of up to 20%) and where the person concerned shows s/he has taken adequate steps to reduce the negative effects of the infringement (reduction of up to 10%). If the trader does not contest the fine, and this is not a second or subsequent infringement, the fine is reduced by up to 20%.</p> <p>However, in the light of the Constitutional Court's judgment in <i>Federation of Estate Agents vs Director General (Competition)</i> (application number 87/2013/2; 3 May 2016) the imposition of these administrative fines may possibly be in breach of the provisions of the Constitution of Malta on fair hearing.</p> <p>The Director General may, when issuing a decision finding an infringement, order the restitution of money or property given by the consumer (Consumer Affairs Act, Article 107A).</p> <p>In the case of the Package Travel, Package Holidays and Package Tours Regulations, which transpose the provisions of Directive 2008/122/EC, where the Malta Tourism Authority is satisfied that the organiser has repeatedly contravened or failed to comply with the Regulations, it may suspended or decline to renew the license of the organiser to operate as a travel agent for a period not exceeding one year.</p>
<p><b>What are the contractual consequences of an administrative order or a judgment on an individual transaction under the Directives?</b></p>	<p>The general rule contained in the Civil Code, applicable to all contracts, is that when a contract contains an unlawful causa (Article 987) or object (Article 985), or where the consent of either party to the contract has been vitiated (through error, fraud or violence) then the contract shall be considered null (Article 974).</p> <p>Under the Consumer Affairs Act, Article 46 dictates that where a consumer contract includes a prohibited or unfair term, such contract shall not be binding on the consumer unless such contract is capable of remaining in existence without the unfair/ prohibited term.</p> <p>The court is also granted specific powers related to the particular contractual relationship in question. For example, in the case of commercial guarantees, Article 91 of the Consumer Affairs Act states that where a guarantor does not observe the terms stipulated in a commercial guarantee, the court may order him to either (i) take the necessary remedial action to observe the terms of the guarantee or (ii) to perform his obligations under the commercial guarantee within a stipulated time.</p> <p>When it comes to travel packages, the Package Travel, Package Holidays and Package Tours Regulations (which transpose Council Directive 90/314/EEC on package travel, package holidays and package tours) dictate that in the case that the consumer withdraws from the contract either because the organiser is constrained to significantly alter an essential term of the contract or because of any reason other than the fault of the consumer, the consumer shall be entitled to either: (i) take a substitute package of equivalent or superior quality if the organiser is</p>

	<p>able to offer such a substitute, or (ii) to take a substitute package of lower quality and recover from the organiser the difference in price between the package purchased and the replacement package or (iii) to be repaid as soon as possible all that has been paid under the contract (see Regulations 13.1 and 13.2). The above holds true except in cases where the package is cancelled (i) because the minimum number required for the package is not met, and the consumer is appropriately informed in writing (ii) due to reasons of unusual and unforeseeable circumstances beyond the control of the organiser, the retailer or other supplier of services, the circumstances of which could not have been avoided even if all due care had been exercised (see Regulation 13.3)</p>
<p><b>Can authorities order the trader to compensate consumers who have suffered harm as a result of the infringement?</b></p>	<p>In terms of Article 14 of the Consumer Affairs Act a consumer, or the prosecuting officer on the consumer's behalf, may request, even verbally, the making of a compensation order. Compensation orders can only be issued by a court. They are only possible where a trader is found guilty of an offence against the Act or regulations made under it, i.e. they can only be made when criminal action is taken against the trader and the trader is found guilty. Because of this condition, compensation orders can currently only be utilised with respect to the Consumer Affairs Act (Price Indication) Regulations, which transpose Directive 98/6/EC. The compensation could be up to EUR 600 for pecuniary loss and of between EUR 35 and EUR 750 as moral damages, for any pain, distress, anxiety and inconvenience suffered by the aggrieved customer. Compensation for pecuniary loss is to be reduced from any amount which may be given in a civil judgment on the same matter. Requests for compensation orders cannot be made where damages have been settled by agreement with the trader or where the consumer has instituted a claim before a court or tribunal of civil jurisdiction. Compensation orders are considered executive title once they <i>become res judicata</i>.</p> <p>Moreover, as noted, the Director General may, when issuing a decision finding an infringement of the provisions transposing the Directives into Maltese law, order the restitution of money or property given by the consumer (Consumer Affairs Act, Article 107A).</p>
<p><b>Can the administrative authorities or the courts require the publication of their decisions?</b></p>	<p>The decisions of the Maltese courts (both civil and criminal, and both at first instance and at appeal stage) are always published. All judgments handed down after 2001 are available online at <a href="http://www.justiceservices.gov.mt/courtservices/Judgements/default.aspx">http://www.justiceservices.gov.mt/courtservices/Judgements/default.aspx</a> ; selected judgments pre-2001 are also available on this database. Decisions of the Appeals Tribunal are published and available on the same database.</p> <p>The decisions of the Consumer Claims Tribunal are published and available online at: <a href="http://www.mccaa.org.mt/en/consumer-claims-tribunal">http://www.mccaa.org.mt/en/consumer-claims-tribunal</a></p> <p>Decisions and orders of the Director General (Consumer Affairs) are, in terms of Article 110H of the Consumer Affairs Act, published. Administrative decisions are available at: <a href="http://www.mccaa.org.mt/en/publication-of-decisions">http://www.mccaa.org.mt/en/publication-of-decisions</a></p> <p>The Director General may also, in order to eliminate or reduce the continuing effects of any non-observance of any provisions of law, require the person against whom a compliance order was issued to publish a copy of the said order and/or to publish a corrective statement. Such publication is to be made in at least two daily newspapers and if</p>

	<p>appropriate in any other medium of communication at the expense of the person served with the notice.</p> <p>Moreover, the Director General may order the publication of undertakings in at least two daily newspapers, at the expense of the trader (Article 12).</p>
<b>IV. OTHER TYPES OF ENFORCEMENT</b>	
<p><b>Are there any self-regulatory enforcement systems in your jurisdiction that deal with aspects of the Directives?</b></p>	<p>To our knowledge, there are no specific self-regulatory enforcement systems in Malta that deal with aspects of the Directives.</p>
<p><b>Are there any out-of-court dispute settlement bodies available that deal with aspects of the Directives (e.g. mediation, conciliation or arbitration schemes ombudsmen)?</b></p>	<p>The Consumer Affairs Act provides that before a claim is presented before the Consumer Claims Tribunal, it is to be referred, by the party making such claim, to the Director General (Consumer Affairs) or a registered consumer association, with the aim of attempting to find an amicable agreement for the parties on the matter in dispute. If no such agreement is reached within 15 working days, the party who made the claim may then present it before the tribunal (Article 23(4)).</p> <p>Should any disputes with traders arise in matters regulated by the Directives, the Consumer Affairs Act also gives consumers the right to have access to Alternative Dispute Resolution (ADR) procedures as established by the Consumer Alternative Dispute Resolution (General) Regulations (Legal Notice 374 of 2015), which transposes Directive 2013/11 into Maltese law. The Consumer Affairs Act also establishes the Consumer Affairs Council which, among other functions, oversees the regulation of all ADR entities which shall be tasked with dealing with the resolution of the above mentioned disputes.</p> <p>According to the Consumer Alternative Dispute Resolution (General) Regulations, any entity may take on ADR functions, however in so doing, the ADR entity must adhere to certain obligations as outlined in the law. For instance, the ADR entity must maintain a website with up-to-date information on any ongoing ADR procedures. This website must be easily accessible to consumers and allow them to submit online any complaints they might have or supporting documents they would like to present (Regulation 5).</p> <p>Regulation 3 outlines the scope of the law, such that the ADR entity may deal with any domestic or cross-border dispute that arises between consumers and traders in sales or services contracts. The decision to take part in ADR procedures is voluntary however there should ideally have been a previous attempt by the consumer to settle the matter directly with the trader, prior to opting for ADR. The ADR entity will then bring the parties together, with the aim of helping them find an amicable solution. It is also the responsibility of the entity to provide such a solution itself.</p> <p>Several details are left to each ADR entity to determine, such as: any preliminary requirements that must be satisfied before the parties initiate an ADR procedure; whether or not the parties are allowed to withdraw from the procedure; the legal effect of the outcome of the ADR procedure; whether the outcome is binding on the parties; the penalties of non-compliance in the case that the decision is binding and; who of the parties, if any, is to bear costs for the procedure, including any awards given at the end of the process (Regulation 8). Regulation 10 further provides that in the event that an ADR entity imposes a solution on the parties, that solution shall be binding on the parties provided they were informed of such binding nature beforehand and expressly consented to its binding nature.</p> <p>In addition, Regulation 11 seeks to safeguard the consumer by stating</p>

that if a consumer has entered into an agreement with a trader to submit any complaints to an ADR entity, prior to a dispute arising, that agreement shall not be binding if it deprives the consumer of their right to seek redress before a tribunal or competent court to resolve the dispute.

In the event that no ADR entity is considered to be competent to deal with a particular issue, Article 43B of the Consumer Affairs Act clarifies that the matter shall be referred to a residual ADR entity which is regulated by the Consumer Alternative Dispute Resolution (Residual ADR) Regulations (Legal Notice 56 of 2017). The Complaints and Conciliation Directorate established under the Fourth Schedule of the Malta Competition and Consumer Affairs Act is the designated residual ADR entity.