

## Other material

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**Member State:** Malta

**Title:** Digisec Media Limited (C56612) vs Director General (Consumer Affairs) et, Judgement 111/2018

**Emanating from:** Civil Court, First Hall, Constitutional Jurisdiction. (Preliminary decision)

**URL:** <https://ecourts.gov.mt/online-services/Judgements/Details?JudgementId=0&CaseJudgementId=118997>

**Keywords:** administrative decision, consumer affairs act, consumer rights breach, terms and conditions, unfair terms, intelligible language,

### Directive Articles

Unfair Contract Terms Directive, [Article 5](#) , Unfair Contract Terms Directive, [Article 5](#) , Consumer Rights Directive, [Chapter 2, Article 5](#) , Consumer Rights Directive, [Chapter 3, Article 9, 2](#) , Consumer Rights Directive, [Chapter 3, Article 10](#) , Unfair Commercial Practices Directive, [link](#)

### Headnote

The Director-General (Consumer Affairs) issued an administrative decision against the plaintiff pursuant to an investigation conducted in terms of the Consumer Affairs Act. The decision was appealed by the plaintiff stating that the penalty imposed was too high and was of a quasi-criminal nature, and the fact that the penalty was not imposed by a court breached its human rights.

Digisec was accused of having acted in breach of the local laws transposing various consumer Directives.

One of the issues that was raised during the proceedings related to the breach of the Consumer Affairs Act and Directive 1993/13 in that the terms and conditions (which constituted the consumer contract) the plaintiff had on its website included a number of unfair terms. In particular, the terms and conditions allowed the trader the possibility of transferring all his rights and obligations under the contract where this may serve to reduce the guarantees or warranties for the consumer, without the consent of the consumer. Furthermore, the terms and conditions were not written in plain and intelligible language which could be understood by the consumers to whom the contract was directed.

Other of the issues that was raised during the proceedings related to unfair commercial practices exercised by the plaintiff.

Finally, the last issue raised during the proceedings was related to the plaintiff's breach of the provisions of the Consumer Rights Regulations (Legal Notice 439 of 2013) which transposes Directive 2011/83. The Director-General (Consumer Affairs) claimed that the terms and conditions of the plaintiff did not give consumers information about the main characteristics of the services being offered, consumers were not informed of additional payments they would have suffered, the model withdrawal form was not present on their website, and consumers were not informed of their right of withdrawal.

The Director-General went on to state that the seriousness of the breach of the provisions relative to the right of withdrawal is not only affecting Maltese consumers but also consumers on a European Union-wide basis.

The Court found for Digisec and held that neither the Director General (Consumer Affairs) nor the Consumer Claims Tribunal constitute a court. This decision also led to a revamp of the Maltese Consumer Affairs Act.

### General Note

### Full text