



Consumer market study on the functioning of legal and commercial guarantees for consumers in the EU

Country fiche: Malta

EUROPEAN COMMISSION

Produced by Consumers, Health, Agriculture and Food Executive Agency (Chafea) on behalf of:

Directorate-General for Justice and Consumers
Directorate E — Consumers
Unit E.1 Consumer markets

Contact: Marilena Di Stasi

E-mail: JUST-CONSULT-E1@ec.europa.eu

*European Commission
B-1049 Brussels*

Consumer market study on the functioning of legal and commercial guarantees for consumers in the EU

Country fiche: Malta

***Europe Direct is a service to help you find answers
to your questions about the European Union.***

Freephone number (*):

00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

“This report was produced under the EU Consumer Programme (2014-2020) in the frame of a specific contract with the Consumers, Health, Agriculture and Food Executive Agency (Chafea) acting on behalf of the European Commission. The content of this report represents the views of the Ipsos-London Economics-Deloitte consortium and is its sole responsibility; it can in no way be taken to reflect the views of the European Commission and/or Chafea or any other body of the European Union. The European Commission and/or Chafea do not guarantee the accuracy of the data included in this report, nor do they accept responsibility for any use made by third parties thereof.”

“The Ipsos-London Economics-Deloitte consortium present this document for the purposes of information only. The information contained here may not be current, does not constitute legal advice and should not be relied upon as such.”

More information on the European Union is available on the Internet (<http://europa.eu>).

Luxembourg: Publications Office of the European Union, 2015

PDF	ISBN 978-92-79-53735-6	doi: 10.2838/357239	DS-02-15-950-EN-N

© European Union, 2015

Reproduction is authorised provided the source is acknowledged.

TABLE OF CONTENT

1.	Malta	6
1.1	Regulatory background	6
1.1.1	Transposition of Directive 1999/44/EC	6
1.1.2	Table of the transposition	9
1.1.3	Additional rights	15
1.2	Enforcement and redress	16
2.	Bibliography	19

TABLES

Table 1: Transposition of Directive 1999/44/EC in the Maltese legislation	10
---	----

BOXES

Box 1: Metal Liquid Membrane, 2010 (with 2013 update)	17
Box 2: v. Demajo and Bros. (mediation)	18

1. Malta

1.1 Regulatory background

Directive 1999/44/EC was transposed into national law through Chapter 378 of the Laws of Malta: the Consumer Affairs Act (Act XXVIII of 1994 as amended by Acts V of 1995, XIX of 1996, XXVI of 2000, VI of 2001 and XV of 2006; Legal Notice 425 of 2007; Acts II of 2008, XIV of 2009, and VI and IX of 2011; Legal Notice 426 of 2012; and Act VI of 2014).

Specifically, the Directive is implemented via the provisions laid down in Part IX of Chapter 378 of the Laws of Malta, the Consumer Affairs Act (hereafter referred to as "the Act"). According to the relevant Communication from the Commission¹, Malta informed the Commission of its transposition measures (as have all countries who introduced this measure).

1.1.1 Transposition of Directive 1999/44/EC

Directive 1999/44/EC has been fully transposed into Maltese law, with the latter extending the scope of a number of provisions of the Directive, as detailed in the table in the following page.

Definitions

When it comes to providing definitions for the five concepts "consumer", "consumer goods", "seller", "producer" and "guarantee", Malta's Act deviates from the Directive in a number of ways.

In the case of the term "consumer", the Act expands the scope of the definition so that, in addition to the definition included in the Directive, the Act also covers (1) "any other individual not being the immediate purchaser or beneficiary, and whether or not a member of the consumer's household, who having been expressly or tacitly authorised or permitted by the consumer, may have consumed, used or benefited from any goods or services provided to the consumer by a trader acting in the course of a trade, business, craft or profession, including goods or services provided as part of gift schemes and similar or analogous inducements" and (2) "any other class or category of persons whether natural or legal as may, from time to time, be designated as "consumers" for all or for any of the purposes of this Act by regulations made by the Minister after consulting the Council"².

For "consumer goods", the Act defines "goods" rather than "consumer goods" and, like the Directive, describes the former as "tangible movable item of property"³.

With regard to the "seller", the Act defines a "trader" rather than a seller. It has been noted that the use of the term "trader" in the Act creates some ambiguity, since the definitional scope of the word "trader" may include the final seller as well as the

¹ Communication from the Commission to the Council and the European Parliament on the implementation of 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 including analysis of the case for introducing direct producers' liability (Brussels 24.4.2007 COM(2007) 210 final), p.8

² The definition of "consumer" is provided in Chapter 378 of the Laws of Malta. Consumer Affairs Act, Part I (Preliminary), Art.2

³ The definition of "goods" is provided in Chapter 378 of the Laws of Malta. Consumer Affairs Act, Part IX Art. 72.1. Unlikely to the Directive, however, without listing the exceptions provided by the Directive ("goods sold by way of execution or otherwise by authority of law, water and gas where they are not put up for sale in a limited volume or set quantity, and electricity).

producer⁴). In addition to defining the trader, the Act also includes a definition of “guarantor” as “the person who is responsible to the consumer for the execution of a commercial guarantee and includes any other person acting for or on behalf of the guarantor”⁵, to cover cases in which the guarantee is provided by a third party.

The Act’s definition of “producer” is identical to that provided in the Directive, with the exception of the territorial scope specified with regard to importing. Whereas the Directive includes in its definition “the importer of consumer goods into the territory of the Community”, Malta’s Act refers to “the importer of consumer goods into a Member State or any other country or group of countries as may from time to time, be designated for this purpose by the Minister by notice in the Gazette”⁶.

Finally, the Act defines “commercial guarantee” rather than “guarantee” and expands the Directive’s definition in two ways. First, the Directive’s article refers to “any undertaking by a seller or producer to the consumer”, whilst the Act refers to “any representation or undertaking however described or given by a trader or a producer to a consumer”. Second, the Directive’s article limits its definition of guarantees to those “given without extra charge”. The Act, on the other hand, includes paid-for guarantees in its definition, specifying that commercial guarantees are “any representation or undertaking however described or given by a trader or a producer to a consumer, *irrespective of whether given with or without an extra charge*” (emphasis added)⁷.

Duration of the legal guarantee

Maltese law states that trader liability for non-conformity of a good extends for a period of two years after the goods’ delivery to the consumer. The law also specifies that this two-year period is suspended whilst the trader and consumer are in discussion about what, if any, remedial action is required, and states that the latter should be conducted “with a view to an amicable settlement”⁸. Additionally, Maltese law applies the same standards to second hand goods, even though the Directive specifies that members have the possibility to attach to the latter less stringent standards (notably a more restricted time period for seller liability, as long as this is not less than a year).

Responsibility in the case of a defective good

Whilst Part IX, Article 78 of the Act holds the trader (as the final seller) liable for the non-conformity of goods vis-a-vis consumers (as specified in the paragraph above), Article 77 of the Act gives the final seller the right to seek redress against the “person or persons liable in the contractual chain”, such as producers, previous sellers or other intermediaries if the final seller believes that they held some responsibility for the goods’ non-conformity⁹.

Proving presence of a defect

⁴See Edgar Micallef P., Mercieca, G. ‘Direct Producers’ Liability and Sellers’ Rights of Redress under Maltese Law’ in Ebers, M.; Janssen, A.; Meyer, O. 2009. European Perspectives on Producers’ Liability GmbH (pp. 427- especially p. 428 citation 8),

http://www.researchgate.net/publication/228229780_European_Perspectives_on_Producers_Liability_Direct_Producers_Liability_and_the_Sellers_Right_of_Redress_-_Comparative_Report

⁵ The definition of “guarantor” is provided in Chapter 378 of the Laws of Malta. Consumer Affairs Act, Part IX Art. 72.1

⁶ The definition of “producer” is provided in Chapter 378 of the Laws of Malta. Consumer Affairs Act, Part IX Art. 72.1

⁷ The definition of “commercial guarantee” is provided in Chapter 378 of the Laws of Malta. Consumer Affairs Act, Part IX Art. 72.1

⁸ Chapter 378 of the Laws of Malta. Consumer Affairs Act, Part IX, Art. 78

⁹ Chapter 378 of the Laws of Malta. Consumer Affairs Act, Part IX, Art. 77

Article 80 of the Act states that in cases where the non-conformity was brought to the trader's attention within a period of six months from the date of the good's delivery, then the presumption is made that the non-conformity existed at the time of the good's delivery. A disclaimer is attached to specify that this only applies in cases where the nature of the good and its lack of conformity make such a presumption reasonable. However, once these criteria are satisfied, the presumption is made and then within the six-month period, the burden is on the trader to prove otherwise¹⁰.

Remedies and reclamations

All conditions related to remedies and reclamations included within the Directive have been directly transposed via the Consumer Affairs Act, Part IX Articles 74-76. The latter specify that the consumer has, in the first instance, the right to repair or replacement of the defective good, and that this is to be provided free of charge¹¹. Alternatively, the consumer can opt for price reduction or contract rescission¹². A number of conditions are attached to each of these options. Repair or replacement are the remedies that consumers are to turn to in the first instance, provided that they are not "impossible" or "disproportionate"¹³, with the latter being judged taking into consideration the value of the goods without the defect, the magnitude of the defect and whether or not one of the alternative remedies could be implemented without inflicting on the consumer significant inconvenience¹⁴. The remedies of price reduction and contract rescission are to be provided in cases where repair and replacement cannot be implemented, where repair and replacement were not implemented in time or where they could not be implemented without inflicting significant inconvenience on the consumer¹⁵. The law also specifies that contract rescission is not an option in cases where the non-conformity of the good in question is minor¹⁶.

Deadline for implementing the solution

Although broadly identical, in the Maltese Act, a small deviation is introduced with regard to the timeframe for repair or replacement of a defective product. The Directive Art. 3.3 states "Any repair or replacement shall be completed within a reasonable time. And without any significant inconvenience...". In the case of the Consumer Affairs Act, the relevant article states "Any repair or replacement shall be completed, *as soon as practicable*, within a reasonable time and without any significant inconvenience..."¹⁷.

Information about rights regarding commercial guarantees

In terms of the information that must be provided to consumers via the guarantee, the Maltese Act goes beyond the Directive by stipulating that the guarantee must also (1) "clearly specify the manner how a consumer must proceed to make a claim and to obtain execution of the commercial guarantee, the person authorised to execute the commercial guarantee and an address in Malta where claims may be sent"¹⁸, (2) "clearly state whether the commercial guarantee may be transferred to others" (default if not specified is that commercial guarantee "may also be availed of by any subsequent owners of the goods to which the commercial guarantee refers"¹⁹, (3) "provide a clear description of

¹⁰ Chapter 378 of the Laws of Malta. Consumer Affairs Act, Part IX, Art. 80

¹¹ Chapter 378 of the Laws of Malta. Consumer Affairs Act, Part IX, Art. 74(2)(a)

¹² Chapter 378 of the Laws of Malta. Consumer Affairs Act, Part IX, Art. 74(2)(b)

¹³ Chapter 378 of the Laws of Malta. Consumer Affairs Act, Part IX, Art. 75(1)

¹⁴ Chapter 378 of the Laws of Malta. Consumer Affairs Act, Part IX, Art. 75(2)

¹⁵ Chapter 378 of the Laws of Malta. Consumer Affairs Act, Part IX, Art. 76(1)

¹⁶ Chapter 378 of the Laws of Malta. Consumer Affairs Act, Part IX, Art. 76(2)

¹⁷ Chapter 378 of the Laws of Malta. Consumer Affairs Act, Part IX Art. 75.3

¹⁸ Chapter 378 of the Laws of Malta. Consumer Affairs Act, Part IX Art. 83.1(d)

¹⁹ Chapter 378 of the Laws of Malta. Consumer Affairs Act, Part IX Art. 83.1(e)

the goods or services covered by the guarantee”²⁰ and (4) “clearly stipulate what the guarantor undertakes to do if there is a defect in the goods covered by the commercial guarantee or if the services covered by the guarantee are not properly carried out”²¹.

1.1.2 Table of the transposition

The next page displays the articles from Directive 1999/44/EC on Consumer Sales and details the status of their transposition into the Maltese legislative system.

All articles of the Directive have been transposed into Maltese law and the latter extends these rights beyond those specified in the Directive in a number of areas and does not exploit opportunities for less stringent provisions even when the Directive affords member states this possibility.

Part IX Art 93B of the Act states that “The purpose of this Part is to implement the provisions of Directive 1999/44/EC of the European Parliament and of the Council of the 25th May 1999 on certain aspects of the sale of consumer goods and associated guarantees shall be applied and interpreted accordingly”.

²⁰ Chapter 378 of the Laws of Malta. Consumer Affairs Act, Part IX Art. 83.1(f)

²¹ Chapter 378 of the Laws of Malta. Consumer Affairs Act, Part IX Art. 83.1(g)

Table 1: Transposition of Directive 1999/44/EC in the Maltese legislation

Areas	Art.	Content	Legislation	Comment*
Scope and definitions	1.1	Purpose	Consumer Affairs Act Part IX Art 93B	No purpose stated, however Part IX Article 93B described above can be read as implying that the purpose of Part IX of the Act mirrors the Directive's purpose.
	1.2.a	Def. Consumer goods	CAA Part I Preliminary	The Act expands the scope of the definition as discussed above under section 1.1.1 Definitions
	1.2.b	Def. Consumer	CAA Part IX Art 72.1	Defines "goods" as "tangible movable item of property" i.e. the same as the Directive, however without the exception provided by the Directive (which are goods sold by way of execution or otherwise by authority of law, water and gas where they are not put up for sale in a limited volume or set quantity, and electricity).
	1.2.c	Def. Seller	CAA Part I Art 2 Chapter 13 of the Laws of Malta. Commercial Code Art 4 CAA Part IX Art 72.1	The Act defines "trader" rather than "seller". Article 2 of the CAA describes the trader as follows: "(i) any person, including any body corporate or incorporate, who in relation to any transactions or other matters covered by this Act or regulations made there under is acting for purposes relating to his trade, business, craft or profession; (ii) any public body, whether corporate or unincorporated, which provides goods or services to consumers for a fee; (iii) any person to whom article 4 of the Commercial Code applies". Article 4 of the Commercial Code states the following: "The term 'trader' means any person who, by profession, exercises acts of trade in his own name, and includes any commercial partnership."
	1.2.d	Def. Producer	CAA Part IX Art 72.1	Direct with the exception of the territorial scope specified with regard to importing.
	1.2.e	Def. Guarantee	CAA Part IX Art 72.1	The Act expands the Directive's definition in two ways, most notably by including paid-for guarantees within scope.
	1.2.f	Def. Repair	CAA Part IX Art 72.1	<i>Direct transposition</i> - Repair meaning bringing consumer goods into conformity with the contract of sale.
	1.3	Exclusion second hand	CAA Part IX Art 72.1	The Act does not exclude second hand items from its definition of "goods".
	1.4	Contracts of sale types	CAA Part IX Art 72.2	<i>Direct transposition</i> - Contracts for the supply of consumer goods shall be deemed contracts of sale
Conformity with the contract	2.1	Conformity requirement	CAA Part IX Art 73.1	<i>Direct transposition</i> - Stating that goods must be delivered to the consumer in conformity with the contract of sale
	2.2	Good conformity	CAA Part IX Art 73.1(a)(b)(c)(d)	Directly transposed with some small variations: One of the marks of conformity with the contract specified in the Directive is that the goods "are fit for any particular purpose for which the consumer requires them and which he made known to the seller at the time of conclusion of the contract and which the seller has accepted". The Act does not specify that the seller (in the Act's case the "trader") must have accepted the terms: the article ends with "which he made known to the trader at the time of conclusion of the contract").
	2.3	Lack of conformity	CAA Part IX Art 73.2(a)(b)	<i>Direct transposition</i> - Disregarding lack of conformity if the consumer was aware of the fault, or if the lack of conformity had its origin in materials supplied by the consumer

	2.4	Seller statements	CAA Part IX Art 73.3(a)(b)(c)	<i>Direct transposition</i> - The seller shall not be bound by public statements in case she/he was not aware of the statement; the statement had been corrected; or the statement did not influence the decision of the consumer to purchase the good
	2.5	Installation	CAA Part IX Art 73.4	<i>Direct transposition</i> - Incorrect installation considered equivalent to lack of conformity if installation formed part of the sale or if the installation instructions created the shortcomings
Rights of the consumer	3.1	Liability	CAA Part IX Art 74.1	<i>Direct transposition</i> - Establishes that the seller is liable for any lack of conformity which exists at the time the good is delivered
	3.2	Remedies	CAA Part IX Art 74.2	<i>Direct transposition</i> - Stating that the consumer has the right to have non-conforming goods brought into conformity free of charge, or to receive an appropriate discount in price, or to contract rescission
	3.3	Conditions	CAA Part IX Art 75.2	(Direct) with small addition with regard to the timeframe for repair/replacement. The Directive article states "Any repair or replacement shall be completed within a reasonable time". In the case of the Act: "Any repair or replacement shall be completed, as soon as practicable, within a reasonable time"(emphasis added)
	3.4	Free of charge	CAA Part IX Art 72.1	<i>Direct transposition</i> - "Free of charge" referring to the necessary costs incurred to bring the goods into conformity, including postage
	3.5	Reduction of the price	CAA Part IX Art 76.1	<i>Direct transposition</i> - Right to price reduction or contract rescission if the consumer is not entitled to the other remedies, or if the seller has not completed them within a reasonable time or without significant inconvenience to the consumer
	3.6	Contract rescission	CAA Part IX Art 76.2	<i>Direct transposition</i> - No contract rescission if the lack of conformity is minor
Right of redress	4	Final seller liability	CAA Part IX Art 77	Omission from the Directive of: "The person or persons liable against whom the final seller may pursue remedies, together with the relevant actions and conditions of exercise, shall be determined by national law."
Time limits	5.1	Time period	CAA Part IX Art 78	(Direct) except that the Act specifies that although the two-year time period applies, "This period shall be suspended for the duration of negotiations carried on between the trader and the consumer with a view to an amicable settlement."
	5.2	Defect confirmation	CAA Part IX Art 79(1)(2)	The Act puts in place the two-month notice period and also stipulates conditions for the notification: Art 79(1) specifies that this must be provided in writing, and Art 79(2) specifies that sufficient proof of notification will be either "a judicial act within the prescribed period" or "if the consumer shows that the letter was sent by registered mail within the prescribed period". Article 5.2 of the Directive stipulates that "Member States shall inform the Commission of their use of this paragraph." According to the relevant Communication from the Commission ²² , Malta informed the Commission of its transposition measures (as have all countries who introduced this measure).
	5.3	Reversed burden	CAA Part IX Art 80	<i>Direct transposition</i> - Any lack of conformity detected within six months of delivery of the goods is presumed to have existed at the time of delivery unless incompatible with the nature of the goods or the lack of conformity
Guarantees	6.1	Legally binding	CAA Part IX Art 90	Direct but with further specification that this holds true "even if such a commercial guarantee is not specifically mentioned in the contract of sale"

²² Commission of the European Communities 2007. Communication from the Commission to the Council and the European Parliament on the implementation of 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 including analysis of the case for introducing direct producers' liability (Brussels 24.4.2007 COM(2007) 210 final), p.8

	6.2	State rights and contents	CAA Part IX Art 83.1	The Act goes beyond the Directive.
	6.3	Written contract	CAA Part IX Art 83.2	<i>Direct transposition</i> - On request by the consumer, the guarantee shall be made available in writing or another accessible durable medium
	6.4	Language of guarantees	CAA Part IX Art 83.1(a)	<i>Direct transposition</i> - The guarantee shall be drafted in one or more languages from among the official languages of the EU
	6.5	Respect 6.2-4	CAA Part IX Art 83.3	<i>Direct transposition</i> - Specifying the validity of the guarantee contract for consumer even if it infringes on the above three paragraphs
Binding nature	7.1	Right restrictions	CAA Part IX Art 85	<i>Direct transposition</i> - Stating that previously agreed conditions between seller and consumer which are agreed before a lack of conformity is known will not be binding if they reduce the consumer rights under this Directive.
	7.1	Reduced period (2nd hand)	CAA Part IX	The Act does not make any exceptions for second-hand goods.
	7.2	Measures of protection	CAA Part IX Art 93A	<i>Direct transposition</i> - Consumers are not to be deprived of the protection afforded by this legislation if the contract opts for the law of a non-member state
National law and minimum protection	8.1	Supplementary rights		
	8.2	National rules retain		
Information	9	Inform of the rights		
Modification	10	Directive 98/27/EC		
Transposition	11.1	Date		
	11.2	Provisions		
Review	12	Jul-06		
Entry into force	13	Day of publication		
Address	14	To Member States		
Recitals	15	Period-of-use deduction		
	18	Suspension 2-year period		

* The mention of "direct" means a direct transposition, disregarding the fact that the sentences can be placed differently or paraphrased relative to the Directive formulation

Legend

	<i>Articles at the discretion of the Member State (not mandatory)</i>
	<i>Rules on procedures to transpose</i>
	<i>Recitals –at the discretion of the Member State</i>

1.1.3 Additional rights

As indicated, Directive 1999/44/EC has mainly been transposed in Part IX of the Consumer Affairs Act²³. This section lists a number of additional consumer rights of note – rights contained in the Consumer Rights Regulations 2013²⁴. The list is non-exhaustive, focusing on the right of information and that of withdrawal.

Right of information

Part II of the Consumer Rights Regulations, Article 4.1 (a-f), lists the information that must be contained within contracts of sale. According to these Regulations, the contract must clearly indicate the main characteristics of the goods or services in question as well as the name, address and telephone number of the trader. In addition, it must state the total cost, including delivery and postal charges where applicable, or an indication that additional charges apply in cases where the latter cannot be reasonably calculated in advance, as well as details in terms of methods of payment and delivery. The trader must also detail their complaint handling procedures, clearly inform consumers about their rights by virtue of legal guarantees and provide details about any commercial guarantees attached to the good. Finally, the duration of the contract and the conditions for the latter's termination must also be included.

Right of withdrawal

In relation to distance and off-premise contracts, according to Part III Article 10.1 of the Consumer Rights Regulations, consumers have a period of fourteen days from when they acquired physical possession of the good within which they are able to withdraw from a contract without providing a reason or paying additional fees.

Article 5.1 (h)(i)(j) states that contracts must clearly specify the “conditions, time limit and procedures” for consumers to make use of their right of withdrawal. The contract must also include a template withdrawal form (contained in Part B of the Consumer Rights Regulations), which consumers can send to traders in order to communicate their wish to withdraw from the sales contract. Additionally, in cases where this applies, the contract should inform consumers that if they have exercised their right to withdraw from a contract, they will be expected to pay for returning the goods as well as for their use of the good until the time that their request to withdraw from the contract was lodged (a total cost calculated in proportion to the entire period initially envisaged in the contract).

Article 5.1 (k) states that sales contracts relating to goods for which no right of withdrawal is granted²⁵ must clearly inform consumers that no right of withdrawal applies.

According to Article 12.1 in cases where the trader does not provide the consumer with the required information related to their right of withdrawal, the withdrawal period is extended to cover an additional twelve months after the fourteen-day withdrawal period normally granted. Article 12.2 states that where traders provides this information within twelve months of the point at which they were expected to (i.e. the point at which the

²³ Chapter 378 of the Laws of Malta. Consumer Affairs Act, Part IX

²⁴ Chapter 378 of the Laws of Malta. Consumer Affairs Act, Consumer Rights Regulations, 2013. The Consumer Rights Regulations, 2013. As stated in Part I Art. 1.2, the purpose of the Consumer Rights Regulations 2013 is “to implement Directive 2011/83/EU of the European Parliament and of the Council of the 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.”:

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=25850&l=1>

²⁵The goods in question are listed in Article 18 of the same regulations

consumer acquired physical possession of the good to which the sales contract relates), then the withdrawal period is calculated as fourteen days from that point.

To benefit from the right of withdrawal, consumers must clearly communicate their wish to withdraw from the sales contract to traders within the withdrawal period (Art 13.1). Article 13.3 of the Regulations clearly stipulates that upon receiving this request, traders must provide consumers with a receipt on a “durable medium”²⁶. It also confirms that consumers must bear the burden of proof of exercising the right of withdrawal in such a way that conforms to the regulations (Art 13.4).

1.2 Enforcement and redress

A number of stages are involved in the claiming process. Consumers are advised to first direct any complaints to the trader responsible. They can do this in person or over the phone, however the Malta Competition and Consumer Affairs Authority (MCCAA) advises consumers to follow up their complaint with a written letter in the event that complaining through these channels proves unfruitful. The written notification should be sent to the trader within two months of the time that the defect was detected. The MCCAA provides a draft letter of notification in Maltese and English on its website and consumers are told to register a complaint with the MCCAA if they do not receive a reply from the trader within a reasonable time period or if they are unsatisfied with the trader's reply.

Registering a complaint with the MCCAA can be done in person, by letter, via an online form or via email. Consumers must provide their personal details as well as details about the case, in addition to copies of receipts and guarantees. Once a complaint is received by the MCCAA, it is assessed and, if considered reasonable, it is passed on to a complaint handler. The complaint handler is there to play a mediatory role, which means that his/her primary task is that of contacting the trader in question and informing him/her of traders' legal obligations towards consumers. The consumer is kept up to date on the case. If an amicable solution is not found as a result of the mediation process, consumers have the option of either withdrawing their complaint or making their claim to the Consumer Claims Tribunal (CCT), a Tribunal established to hear and decide on cases related to claims whose value amounts to €3,500 or less. Consumers make their claim by filling in a form and sending it to the Tribunal along with a registration fee. At this point, the trader receives a copy of the consumer's claim against them and may submit a reply to the claim or a counter-claim in writing. In either case, a copy is sent to the consumer. Finally, consumers are notified about the date of their hearing by the Secretary of the Tribunal. In some cases, once the hearings have taken place and a decision has been reached by the Arbiter, the consumer also has a right of appeal at any point within a 20-day period from the decision date. In the event that the Tribunal decides in the consumer's favour, the consumer is told to expect the decision to be honoured by the trader within 20 days of the decision date. If this is not the case, consumers should contact the trader and potentially seek further assistance and advice from a private lawyer²⁷.

An additional measure worth noting is the coming into force of the Collective Proceedings Act (Chapter 520 of the Laws of Malta, Act No. VI of 2012)²⁸. As a result of this latter Act, classes of consumers can put a joint claim forward by an authorised class representative. The latter would include registered consumer associations that are considered to adequately reflect the interests of those they represent and who have no direct material

²⁶ “Durable medium” is described in the Consumer Rights Regulations 2013 Part I (Preliminary) Section 2, in the following way: “... any instrument which enables the consumer or the trader to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored”

²⁷ Malta Competition and Consumer Affairs Authority, ‘Complaints and Conciliation Directorate’. Accessed June, 2015. Retrieved from: <http://mccaa.org.mt/en/complaints>

²⁸ Micallef, P.E. (2012), ‘The Collective Proceedings Act – another step forward’. Times of Malta. Available at: <http://www.timesofmalta.com/articles/view/20120705/letters/The-Collective-Proceedings-Act-another-step-forward.427211>

interest in the claim that would create a conflict²⁹. The class action introduced under the Collective Proceedings Act is an “opt-in” form, which forces individuals to sign up as claimants in order to be considered part of the claim, whereas the Consumer Association of Malta had originally pushed for an “opt-out” approach³⁰, whereby all those consumers suffering as a result of the issue which gave rise to a claim would be automatically considered claimants unless they explicitly opt out of the process³¹.

Cases

The Malta Consumers' Association details a number of consumer claims made in relation to product guarantees and lack of conformity of goods³². The MCCA also publishes the sentences emanating from cases brought before the Tribunal on its website³³.

Two examples relating to guarantees specifically are provided in the boxes below. In the first case, the claim does not relate to a “tangible, movable good”, and yet it has been included because it was felt that its implications were relevant and instructive. In particular, it was felt that it points to a potential weakness in the enforcement of tribunal sentences in Malta.

Box 1: Metal Liquid Membrane, 2010 (with 2013 update)³⁴

In 2009 and 2010, three separate rulings by the Consumer Claims Tribunal vindicated the claims made by three consumers against Metal Liquid Membrane, a company offering waterproofing and insulation services for rooftops. Consumers were given guarantees of between 15 and 30 years. In the case of one of the consumers, the guarantee did not include any company details, making it impossible for the guarantor to be contacted. Another consumer, having paid, never received either the receipt or the guarantee. In addition to the non-conformity of the guarantee itself, consumers reported problems with their rooftops, which continued to leak, or complained that the work had not been completed according to the terms agreed. Consumers also reported that it was impossible to get assistance from the company, either because its employees acted unreliably and unhelpfully when contacted or because contact details were not provided at all.

Despite the rulings of the Tribunal, there is evidence that by 2013, at least one of the consumers still had not received the expected compensation. Consumers Association Malta reported that as of May 2013, one of the claimants had not received her money back. The Association wrote to the MCCA in 2011 to ask whether all claimants had been compensated in line with the Tribunal's ruling, but by May 2013 had not received a reply. The Association confirmed that one of the claimants had not been compensated by contacting her directly.

²⁹ Chapter 520 of the Laws of Malta Act No. VI of 2012. Collective Proceedings Act, Art. 12

³⁰ Micallef, P.E. (2012), 'The Collective Proceedings Act – another step forward'. Times of Malta. Available at: <http://www.timesofmalta.com/articles/view/20120705/letters/The-Collective-Proceedings-Act-another-step-forward.427211>

³¹ Malta's approach is in line with the European Commission's 2013 recommendation which favours the “opt-in” procedure requiring consumers' explicit consent before they are considered claimants in a case involving collective redress. See European Commission (2013), 'Commission recommends Member States to have collective redress mechanisms in place to ensure effective access to justice'. Available at: http://europa.eu/rapid/press-release_IP-13-524_en.htm

³² Consumers' Association – Malta, 'Court Decisions.' Accessed June, 2015. Retrieved from: <http://www.camalta.org.mt/site/courtdecisions.php>

³³ Malta Competition and Consumer Affairs Authority, 'Tribunal Sentences 2015.' Accessed June, 2015. Retrieved from: <http://www.mccaa.org.mt/en/tribunal-sentences-2015>

³⁴ Consumers' Association – Malta, 'Metal Liquid Membrane ... A Case Of Bad Workmanship.' Accessed June, 2015. Retrieved from: http://www.camalta.org.mt/site/search_details.php?misc=search&subaction=showfull&id=1367943076&archive=&cnsow=news&ucat=30&start_from=&

The next example relates to a successful case of mediation which prevented the case from moving to the litigation stage. What is interesting about the below case is that the trader chose to replace the defective good notwithstanding the expiration of the guarantee. The below case was chosen to highlight the potential power of the mediation process to encourage remedial action on the basis of good will and not purely through application of the law.

Box 2: v. Demajo and Bros. (mediation)³⁵

In 2012, a consumer purchased a freezer. Once the consumer noticed that ice formed at the top of the freezer within a very short period of time, the consumer contacted the company whose technicians attempted to fix the problem, but proved unsuccessful. Consumers' Association Malta made contact with the company on the consumer's behalf and the company opted to replace the freezer even though they believed that the guarantee had expired. The Consumers Association praises the company for this behaviour on its website.

³⁵ Consumers' Association – Malta, 'SATISFIED: v Demajo and Bros.' Accessed June, 2015. Retrieved from: http://www.camalta.org.mt/site/search_details.php?misc=search&subaction=showfull&id=1349638365&archive=&cnshow=news&ucat=21&start_from=&

2. Bibliography

European Legislation

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 - Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31999L0044:en:HTML>

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 – Available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:en:PDF>

Legislation

Consumer Affairs Act, Retrieved from:

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8845>

Consumer Rights Regulations 2013, Retrieved from:

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=25850&l=1>

Collective Proceedings Act, Retrieved from:

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=23398&l=1>

Commercial Code, Retrieved from:

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8578>

Reports

Micallef, P.E. (2012), 'The Collective Proceedings Act – another step forward'. Times of Malta. Retrieved from:

<http://www.timesofmalta.com/articles/view/20120705/letters/The-Collective-Proceedings-Act-another-step-forward.427211>

Communication from the Commission to the Council and the European Parliament on the implementation of 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 including analysis of the case for introducing direct producers' liability (Brussels 24.4.2007 COM(2007) 210 final): Retrieved from:

http://ec.europa.eu/consumers/archive/cons_int/safe_shop/guarantees/CSD_2007_EN_final.pdf

European Commission (2013), 'Commission recommends Member States to have collective redress mechanisms in place to ensure effective access to justice'. Retrieved from: http://europa.eu/rapid/press-release_IP-13-524_en.htm

Edgar Micallef, P.; Mercieca, G. (2009), 'Direct Producers' Liability and Sellers' Right of Redress under Maltese Law' in Ebers, M.; Janssen, A.; Meyer, O. (Eds.) (2009), 'European Perspectives on Producers' Liability: Direct Producers' Liability for Non-conformity and the Sellers' Right of Redress', Part 3 (pp.427-444). European Law Publishers GmbH Munich. Available at:

http://www.researchgate.net/publication/228229780_European_Perspectives_on_Producers_Liability_Direct_Producers_Liability_and_the_Sellers_Right_of_Redress_-_Comparative_Report

Websites

Consumers' Association – Malta, 'Court Decisions.' Retrieved from:
<http://www.camalta.org.mt/site/courtdecisions.php>

Consumers' Association – Malta, 'Metal Liquid Membrane ... A Case Of Bad Workmanship.' Retrieved from:
http://www.camalta.org.mt/site/search_details.php?misc=search&subaction=showfull&id=1367943076&archive=&cnshow=news&ucat=30&start_from=&

Consumers' Association – Malta, 'SATISFIED: v Demajo and Bros.' Retrieved from:
http://www.camalta.org.mt/site/search_details.php?misc=search&subaction=showfull&id=1349638365&archive=&cnshow=news&ucat=21&start_from=&

Malta Competition and Consumer Affairs Authority, 'Complaints and Conciliation Directorate'. Retrieved from: <http://mccaa.org.mt/en/complaints>

Malta Competition and Consumer Affairs Authority, 'Tribunal Sentences 2015.' Retrieved from: <http://www.mccaa.org.mt/en/tribunal-sentences-2015>

