

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 20,768, 14 ta' Jannar, 2022

Taqsim A

MALTA

ATT Nru I tal-2022

ATT maħruġ b'ligi mill-Parlament ta' Malta.

ATT sabiex jemenda l-Att dwar l-Affarijiet tal-Konsumatur, Kap. 378.

ACT No. I of 2022

AN ACT enacted by the Parliament of Malta.

AN ACT to amend the Consumer Affairs Act, Cap. 378.

Nagħti l-kunsens tiegħi.

(L.S.)

GEORGE VELLA
President

14 ta' Jannar, 2022

ATT Nru I tal-2022

ATT sabiex jemenda l-Att dwar l-Affarijiet tal-Konsumatur, Kap. 378.

IL-PRESIDENT bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, hareġ b'ligi dan li ġej:-

1. (1) It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2022 li jemenda l-Att dwar l-Affarijiet tal-Konsumatur u dan l-Att għandu jinqara u jinftiehem haġa waħda mal-Att dwar l-Affarijiet tal-Konsumatur, hawn iżjed 'il quddiem imsejjah "l-Att prinċipali".

Titolu fil-qosor u bidu fis-sehħ. Kap. 378.

(2) Dan l-Att għandu jidhol fis-sehħ fl-1 ta' Jannar 2022.

2. L-artikolu 72 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 72 tal-Att prinċipali.

(a) fis-subartikolu (1) tiegħu:

(i) immedjatament qabel id-definizzjoni "bla ebda hłas" għandha tiżdied id-definizzjoni ġdida li ġejja:

" "bejjiegħ" tfisser kwalunkwe persuna fiżika jew ġuridika, irrISPETTIVAMENT mill-fatt li tkun ta' proprjetà privata jew pubblika, li qed taġixxi, inkluż permezz ta' kwalunkwe persuna oħra li taġixxi f'isem dik il-persuna fiżika jew ġuridika jew għannom ta' dik il-persuna, għal skopijiet relatati mal-kummerċ, in-negożju, is-sengħa jew il-professjoni tagħha, fir-rigward ta' kuntratti koperti minn din it-Taqsima;"

(ii) immedjatament qabel id-definizzjoni "garanti" għandhom jiżdiedu d-definizzjonijiet godda li ġejjin:

" "durabbiltà" tfisser il-kapaċità tal-oġġetti li jżommu l-funzjonijiet u l-prestazzjoni tagħhom f'uzu normali;

"funzjonalità" tfisser il-kapaċità tal-oġġetti li jwettqu l-funzjonijiet tagħhom fir-rigward tal-iskop tagħhom;"

(iii) id-definizzjoni "garanzija kummerċjali" għandha tiġi sostitwita b'dan li ġej:

" "garanzija kummerċjali" tfisser kull impenn mill-bejjiegħ jew minn produttur (il-garanti) lill-konsumatur, flimkien mal-obbligu legali tal-bejjiegħ dwar il-garanzija ta' konformità, ta' rimborż tal-prezz imħallas jew ta' sostituzzjoni, tiswija jew manutenzjoni ta' oġġetti fi kwalunkwe mod jekk ma jissodisfawx l-ispeċifikazzjonijiet jew kull rekwiżit ieħor mhux relatat mal-konformità stipulati fid-dikjarazzjoni tal-garanzija jew fir-reklamar relevanti disponibbli fil-mument tal-konklużjoni tal-kuntratt, jew qablu;"

(iv) immedjatament wara d-definizzjoni "garanzija kummerċjali" għandhom jiżdiedu d-definizzjonijiet godda li ġejjin:

" "interoperabbiltà" tfisser il-kapaċità tal-oġġetti li jiffunzjonaw b'hardware jew software differenti minn dawk li magħhom normalment jintużaw oġġetti tal-istess tip;

"irkant pubbliku" tfisser metodu ta' bejgħ fejn oġġetti u servizzi jkunu offruti minn bejjiegħ lill-

konsumaturi, li jattendu jew jingħataw il-possibbiltà li jattendu l-irkant fizikament, permezz ta' procedura ta' offeriti trasparenti u kompetittiva mmexxija minn irkantatur u fejn l-offerent rebbieħ ikun obbligat li jixtri l-oġġetti jew is-servizzi;

"kompatibbiltà" tfisser il-kapaċità tal-oġġetti li jiffunzjonaw b'hardware jew software li normalment jintużaw magħhom oġġetti tal-istess tip, mingħajr il-bżonn li l-oġġetti, hardware jew software jigu kkonvertiti;

"konsumatur" tfisser kwalunkwe persuna fizika, li, b'rabta ma' kuntratti koperti minn din it-Taqsima, qed tagixxi għal skopijiet li jmorru lil hinn mill-kummerċ, in-negozju, is-sengħa jew il-professjoni ta' dik il-persuna;

"kontenut diġitali" tfisser data li tiġi prodotta u pprovduta f'forma diġitali;

"kuntratt ta' bejgħ" tfisser kull kuntratt li bih il-bejjiegħ jittrasferixxi jew jimpenja ruħu li jittrasferixxi l-proprjetà ta' oġġetti lill-konsumatur, u l-konsumatur iħallas jew jimpenja ruħu li jħallas il-prezz tagħhom;

"mezz durabbli" tfisser kwalunkwe strument li jippermetti li l-konsumatur jew il-bejjiegħ jaħžen informazzjoni indirizzata personalment lil dik il-persuna b'mod li hu aċċessibbli għal referenza futura, għal perjodu ta' żmien adegwat għall-iskopijiet tal-informazzjoni, u li jippermetti r-riproduzzjoni mhux mibdula tal-informazzjoni maħżuna;"

(v) id-definizzjoni "bla ebda hlas" għandha tiġi sostitwita b'dan li ġej:

" "mingħajr hlas" tfisser hielsa mill-ispejjeż neċessarji magħmula sabiex l-oġġetti jingiebu f'konformità, b'mod partikolari l-ispejjeż tal-posta, tal-garr, tax-xogħol jew tal-materjali;"

(vi) id-definizzjoni "oġġetti" għandha tiġi sostitwita b'dan li ġej:

" "oġġetti" tfisser:

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(a) kwalunkwe oġġetti tangibbli mobbli:

Iżda li l-ilma, il-gass u l-elettriku għandhom jitqiesu bħala oġġetti fis-sens ta' din it-Taqsima meta jitpoġġew għall-bejgħ f'volum limitat jew fi kwantità fissa;

(b) kwalunkwe oġġetti tangibbli mobbli li jinkorporaw jew li huma interkonnessi ma' kontenut diġitali jew servizz diġitali b'tali mod li n-nuqqas ta' dak il-kontenut diġitali jew servizz diġitali ma jippermettix li l-oġġetti jwettqu l-funzjonijiet tagħhom hawn iżjed 'il quddiem imsejha "oġġetti b'elementi diġitali";

(vii) id-definizzjoni "produttur" għandha tiġi sostitwita b'dan li ġej:

" "produttur" tfisser manifattur tal-oġġetti, importatur tal-oġġetti fl-Unjoni Ewropeja jew kwalunkwe persuna li ssostni li hija produttur billi tqiegħed isimha, it-trademark jew sinjal distintiv ieħor fuq l-oġġetti";

(viii) minnufih wara d-definizzjoni "produttur" għandha tiżdied id-definizzjoni ġdida li ġejja:

" "servizz diġitali" tfisser:

(a) servizz li jippermetti lill-konsumatur johloq, jipproċessa, jaħżen jew li jkollu aċċess għal data f'forma diġitali; jew

(b) servizz li jippermetti l-kondiviżjoni ta' data f'format diġitali jew il-kondiviżjoni magħha, li tkun imtelligħa jew maħluqa mill-konsumatur jew utenti oħra ta' dak is-servizz";

(ix) fit-test Inġliż, it-tifsira "repair" għandha tiġi sostitwita b'dan li ġej:

" "repair" means in the event of lack of conformity, the process of bringing goods into conformity with the sales contract.";

(b) is-subartikolu (2) tiegħu għandu jiġi sostitwit b'dan li

gej:

"(2) Id-dispożizzjonijiet ta' din it-Taqsima għandhom ikunu applikabbli għal kuntratti ta' bejgħ bejn konsumatur u bejjiegħ.";

(ċ) is-subartikolu (3) tiegħu għandu jiġi sostitwit b'dan li
gej:

"(3) Kuntratti bejn konsumatur u bejjiegħ għall-provvista ta' oġġetti li jridu jiġu manifatturati jew prodotti għandhom jitqiesu wkoll bħala kuntratti ta' bejgħ għall-iskop ta' din it-Taqsima.";

(d) immedjatement wara s-subartikolu (3) tiegħu għandhom jiżdiedu s-subartikoli (4) u (5) godda li ġejjin:

"(4) Din it-Taqsima ma għandhiex tapplika għal kuntratti għall-provvista ta' kontenut diġitali jew servizzi diġitali. Madankollu, għandha tapplika għal kontenut diġitali jew servizzi diġitali li jkunu inkorporati fl-oġġetti, jew interkonnessi magħhom, fis-sens tal-paragrafu (b) tat-tifsira "oġġetti" fis-subartikolu (1) u li jiġu pprovduti mal-oġġetti skont il-kuntratt tal-bejgħ, irrispettivament minn jekk tali kontenut diġitali jew servizz diġitali jkunx fornut mill-bejjiegħ jew minn parti terza. F'każ ta' dubju dwar jekk il-provvista ta' kontenut diġitali inkorporat jew interkonness jew servizz diġitali inkorporat jew interkonness jifformax parti mill-kuntratt tal-bejgħ, il-kontenut diġitali jew is-servizz diġitali għandu jkun preżunt li jkun kopert mill-kuntratt tal-bejgħ.

(5) Din it-Taqsima ma għandhiex tapplika għal:

(a) kwalunkwe mezz tangibbli li jservi esklużivament bħala trasportatur għall-kontenut diġitali;

(b) kwalunkwe oġġett mibjugħ b'eżekuzzjoni jew b'mod ieħor bl-awtorità tal-liġi; jew

(ċ) oġġetti użati mibjugħa f'irkant pubbliku:

Iżda fil-każ imsemmi fil-paragrafu (ċ), irkantaturi kif definiti fl-Att dwar l-Irkantaturi għandhom jagħmlu faċilment għad-dispożizzjoni tal-konsumaturi informazzjoni ċara u komprensiva li d-drittijiet li joħorġu minn din it-Taqsima ma japplikawx."

Kap. 342.

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Sostituzzjoni tal-artikolu 73 tal-Att prinċipali.

3. L-artikolu 73 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

"Rekwiziti soġġettivi għall-konformità.

73. (1) Il-bejjieġha għandhom jikkunsinnaw oġġetti lill-konsumatur li jikkonformaw mal-kuntratt tal-bejgħ, liema oġġetti għandhom, b'mod partikolari, fejn applikabbli:

(a) ikunu tad-deskrizzjoni, it-tip, il-kwantità u l-kwalità, u jkollhom il-funzjonalità, il-kompatibbiltà, l-interoperabbiltà u l-karatteristiċi l-oħra, kif jirrikjedi l-kuntratt tal-bejgħ;

(b) ikunu tajbin għal kull għan partikolari li għalih ikun jehtieghom il-konsumatur u li l-konsumatur ikun għarraf bih lill-bejjieġh mhux aktar tard mill-ħin meta jkun ġie konkluż il-kuntratt tal-bejgħ, u li fir-rigward tiegħu l-bejjieġh ikun aċċetta;

(ċ) jiġu kkonsenjati mal-aċċessorji kollha u iSTRUZZJONI, inkluż dwar l-istallazzjoni, kif stipulat fil-kuntratt tal-bejgħ; u

(d) jiġu fornuti b'aġġornamenti kif stipulat fil-kuntratt tal-bejgħ.

Rekwiziti oġġettivi għall-konformità.

(2) Minbarra li jikkonformaw ma' kwalunkwe rekwizit soġġettiv għall-konformità mas-subartikolu (1) l-oġġetti għandhom:

(a) ikunu adattati għall-iskopijiet li għalihom normalment jintużaw oġġetti tal-istess tip, b'kont meħud, fejn applikabbli, ta' kwalunkwe liġi, standards tekniċi jew, fin-nuqqas ta' tali standards tekniċi, il-kodiċi ta' kondotta industrijali speċifiċi għas-settur applikabbli;

(b) fejn applikabbli, ikunu ta' kwalità tal-kampjun jew il-mudell li l-bejjieġh ikun qiegħed għad-dispożizzjoni tal-konsumatur qabel il-konklużjoni tal-kuntratt u jikkorrispondu għad-deskrizzjoni tiegħu;

(ċ) fejn applikabbli, jiġu pprovduti flimkien ma' tali aċċessorji, li jinkludu l-imballaġġ, l-istruzzjonijiet għall-istallazzjoni jew iSTRUZZJONIJET oħra, kif il-konsumatur jista' raġonevolment jistenna li jirċievi; u

(d) jikkorrispondu għall-kwantità u jkollhom il-kwalitajiet u karatteristiċi oħrajn, inkluż f'termini ta' durabbiltà, funzjonalità, kompatibbiltà u sigurtà, normali għal oġġetti tal-istess tip u li l-konsumatur jista' raġonevolment jistenna minhabba n-natura tal-oġġetti u ta' kull dikjarazzjoni pubblika magħmula minn jew f'isem il-bejjiegħ, jew persuni oħra f'holoq aktar preċedenti tal-katina tat-tranzazzjonijiet, inkluż il-produttur, partikolarment fir-reklamar jew fuq it-tikkettar.

(3) Il-bejjiegħ ma għandux ikun marbut b'dikjarazzjonijiet pubbliċi, kif imsemmi fis-subartikolu (2)(d) jekk il-bejjiegħ juri li:

(a) il-bejjiegħ ma kienx, u ma setax raġonevolment ikun, konxju tad-dikjarazzjoni pubblika inkwistjoni;

(b) sal-mument li fih ikun għe konkluz il-kuntratt, id-dikjarazzjoni pubblika kienet għet korretta bl-istess mod, jew b'mod komparabbli bħal kif kienet saret; jew

(c) id-deċiżjoni li jinxtraw l-oġġetti ma setgħetx għet influwenzata mid-dikjarazzjoni pubblika.

(4) F'każ ta' oġġetti b'elementi diġitali, il-bejjiegħ għandu jiżgura li l-konsumatur jiġi infurmat bl-aġġornamenti u jiġi fornut bihom, inklużi l-aġġornamenti tas-sigurtà meħtieġa biex daww l-oġġetti jinżammu f'konformità, għall-perjodu ta' żmien:

(a) li konsumatur jista' raġonevolment jistenna, minhabba t-tip u l-iskop tal-oġġetti u l-elementi diġitali, u b'kont meħud taċ-ċirkustanzi u n-natura tal-kuntratt, meta l-kuntratt tal-bejgħ jipprevedi att wiehed ta' provvista għall-kontenut diġitali jew għas-servizz diġitali; jew

(b) indikat fil-proviso għall-artikolu 78(1) meta l-kuntratt tal-bejgħ jipprevedi l-provvista kontinwa tal-kontenut diġitali jew tas-servizz diġitali għal perjodu ta' żmien.

(5) Jekk il-konsumatur jonqos milli jinstalla l-aġġornamenti pprovduti f'konformità mas-subartikolu (4) fi żmien raġonevoli, il-bejjiegħ ma għandu jkun responsabbli għall-ebda nuqqas ta' konformità li jirriżulta biss min-nuqqas tal-aġġornament rilevanti, diment li:

(a) il-bejjiegħ ikun informa lill-konsumatur dwar id-disponibbiltà tal-aġġornament u l-konsegwenzi tan-nuqqas tal-konsumatur li jinstallah; u

(b) in-nuqqas tal-konsumatur li jinstalla jew l-istallazzjoni hażina mill-konsumatur tal-aġġornament ma kinux dovuti għal nuqqasijiet fl-istruzzjonijiet tal-istallazzjoni pprovduti lill-konsumatur.

(6) Ma għandu jkun hemm l-ebda nuqqas ta' konformità fis-sens tas-subartikolu (2) jew (4) jekk, fil-mument meta jkun għe konkluz il-kuntratt tal-bejgħ, il-konsumatur ikun għe infurmat b'mod speċifiku li karatteristika partikolari tal-oġġetti kienet qed tiddevja mir-rekwiżiti oġġettivi għall-konformità stabbiliti fis-subartikolu (2) jew (4) u l-konsumatur aċċetta dik id-devjazzjoni esplicitament u separatament fil-mument tal-konkluzjoni tal-kuntratt tal-bejgħ.

Istallazzjoni hażina tal-oġġetti.

(7) Kwalunkwe nuqqas ta' konformità li jirriżulta mill-istallazzjoni hażina tal-oġġetti għandu jitqies bħala nuqqas ta' konformità tal-oġġetti jekk:

(a) l-istallazzjoni tiffirma parti mill-kuntratt tal-bejgħ u tkun saret mill-bejjiegħ jew taht ir-responsabbiltà tiegħu; jew

(b) l-istallazzjoni, maħsuba biex titwettaq mill-konsumatur, tkun saret mill-konsumatur u l-istallazzjoni hażina kienet dovuta għal nuqqasijiet fl-istruzzjonijiet għall-istallazzjoni pprovduti mill-bejjiegħ jew, fil-każ ta' oġġetti b'elementi diġitali, provdut mill-bejjiegħ jew mill-fornitur tal-kontenut diġitali jew tas-servizz diġitali.

(8) L-ebda haġa f'dan l-artikolu ma għandha tippregudika l-applikazzjoni tal-artikolu 73A."

4. Immedjatament wara l-artikolu 73 tal-Att prinċipali għandu

Żieda tal-artikolu 73A għdid fl-Att prinċipali.

jiżdied l-artikolu 73A ġdid li ġej:

"Drittijiet ta' partijiet terzi.

73A. Meta restrizzjoni li tirriżulta minn ksur ta' kwalunkwe dritt ta' parti terza, b' mod partikolari drittijiet tal-proprjetà intellettwali, timpedixxi jew tillimita l-użu tal-oġġetti skont is-subartikoli (1) sa (6) tal-artikolu 73, il-konsumatur ikun intitolat għar-rimedji stabbiliti għan-nuqqas ta' konformità previsti fl-artikolu 74(1), (2), (3), (4), fl-artikolu 75(1) u fl-artikolu 76 (2), sakemm il-liġi ma tipprevedix in-nullità jew ir-rexissjoni tal-kuntratt tal-bejgħ f'każijiet bħal dawn."

5. L-artikolu 74 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 74 tal-Att prinċipali.

"Rimedji għal nuqqas ta' konformità.

74. (1) Fil-każ ta' nuqqas ta' konformità, il-konsumatur għandu jkun intitolat li jkollu l-oġġetti miġjuba f'konformità jew li jirċievi tnaqqis proporzjonat fil-prezz, jew li jitermina l-kuntratt, skont il-kundizzjonijiet stabbiliti f'dan l-artikolu u fl-artikolu 75.

(2) Il-bejjiegħ jista' jirrifjuta li jġib l-oġġetti f'konformità jekk it-tiswija u s-sostituzzjoni jkunu impossibbli jew jimponu spejjeż sproporzjonati fuq il-bejjiegħ, filwaqt li jitqiesu ċ-ċirkustanzi kollha inklużi dawk imsemmija fil-paragrafi (a) u (b) tas-subartikolu (1) tal-artikolu 75.

(3) Il-konsumatur għandu jkollu d-dritt għal tnaqqis proporzjonat fil-prezz f'konformità mal-artikolu 76(1) jew għat-terminazzjoni tal-kuntratt tal-bejgħ f'konformità mal-artikolu 78A fi kwalunkwe wieħed mill-każijiet li ġejjin:

(a) il-bejjiegħ ma jkunx lesta t-tiswija jew is-sostituzzjoni jew, fejn applikabbli, ma jkunx lesta t-tiswija jew is-sostituzzjoni f'konformità mal-artikolu 75(3) u (4), jew il-bejjiegħ ikun irrifjuta li jġib l-oġġetti f'konformità skont is-subartikolu (4);

(b) jirriżulta nuqqas ta' konformità minkejja li l-bejjiegħ ikun ipprova jġib l-oġġetti f'konformità;

(ċ) in-nuqqas ta' konformità tant ikun ta' natura serja li jiġġustifika tnaqqis immedjat fil-prezz jew it-terminazzjoni tal-kuntratt tal-bejgħ; jew

(d) il-bejjiegħ ikun iddikjara, jew ikun ċar miċ-ċirkustanzi, li l-bejjiegħ ma jkunx se jgħib l-oġġetti f'konformità fi żmien raġonevoli, jew mingħajr inkonvenjent sinifikanti għall-konsumatur.

(4) Il-konsumatur għandu jkollu d-dritt li ma jhallas l-ebda parti pendenti mill-prezz jew biċċa minnu sakemm il-bejjiegħ ikun issodisfa l-obbligi tiegħu skont din it-Taqsima."

Sostituzzjoni tal-artikolu 75 tal-Att prinċipali.

6. L-artikolu 75 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

"Tiswija jew sostituzzjoni ta' oġġetti.

75. (1) Sabiex l-oġġetti jingiebu f'konformità, il-konsumatur jista' jagħżel bejn tiswija u sostituzzjoni, sakemm ir-rimedju magħżul ma jkunx impossibbli jew, meta mqabbel mar-rimedju l-ieħor, jimponi spejjeż sproporzjonati fuq il-bejjiegħ meta jitqiesu ċ-ċirkustanzi kollha, inklużi:

(a) il-valur li l-oġġetti kien ikollhom kieku ma kien hemm l-ebda nuqqas ta' konformità;

(b) is-sinifikat tan-nuqqas ta' konformità;

u

(ċ) jekk ir-rimedju alternattiv jistax jiġi pprovdut mingħajr inkonvenjent sinifikanti għall-konsumatur.

(2) Tiswijiet jew sostituzzjonijiet għandhom jitwettqu:

(a) bla ħlas;

(b) fi żmien raġonevoli mill-mument li l-bejjiegħ ikun ġie infurmat mill-konsumatur dwar in-nuqqas ta' konformità; u

(ċ) mingħajr l-ebda inkonvenjent sinifikanti għall-konsumatur, filwaqt li jitqiesu n-natura tal-oġġetti u l-iskop li għalih il-konsumatur kellu bżonn l-oġġetti.

(3) Jekk in-nuqqas ta' konformità għandu jiġi rimedjat minn tiswija jew sostituzzjoni tal-oġġetti, il-konsumatur għandu jqiegħed l-oġġetti għad-dispożizzjoni tal-bejjiegħ. Il-bejjiegħ għandu jiehu lura l-oġġetti sostitwiti għas-spejjeż tal-bejjiegħ.

(4) Jekk tiswija tirrikjedi t-tneħħija ta' oġġetti li jkunu ġew installati b' mod konsistenti man-natura u l-iskop tagħhom qabel ma jkun immanifesta ruħu n-nuqqas ta' konformità, jew jekk tali oġġetti jridu jiġu sostitwiti, l-obbligu ta' tiswija jew sostituzzjoni tal-oġġetti għandu jinkludi t-tneħħija tal-oġġetti mhux konformi, u l-installazzjoni ta' oġġetti ta' sostituzzjoni jew oġġetti msewwija, jew li jgħorru l-ispejjeż ta' dik it-tneħħija u l-installazzjoni.

(5) Il-konsumatur ma għandux ikun marbut li jhallas għall-użu normali tal-oġġetti matul il-perjodu qabel is-sostituzzjoni tagħhom."

7. L-artikolu 76 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 76 tal-Att prinċipali.

"Tnaqqis fil-prezz. 76. (1) It-tnaqqis fil-prezz għandu jkun proporzjonat għat-tnaqqis fil-valur tal-oġġetti li jkun irċieva l-konsumatur meta mqabbel mal-valur li kien ikollhom l-oġġetti kieku kienu konformi.

(2) Il-konsumatur ma għandux ikollu d-dritt jittermina l-kuntratt jekk in-nuqqas ta' konformità jkun biss wieħed minuri. Il-bejjiegh għandu jkollu l-oneru tal-prova fir-rigward ta' jekk in-nuqqas ta' konformità jkunx wieħed minuri."

8. L-artikolu 77 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 77 tal-Att prinċipali.

"Dritt ta' rimedju. 77. Fejn il-bejjiegh ikun responsabbli lejn il-konsumatur minħabba nuqqas ta' konformità li jirriżulta minn att jew ommissjoni, inkluża l-ommissjoni li jiġu pprovduti aġġornamenti għal oġġetti b'elementi diġitali skont l-artikolu 73(4), minn persuna f'ħoloq preċedenti fil-katina tat-tranzazzjonijiet, il-bejjiegh finali għandu jkollu d-dritt li jfittex rimedji kontra l-persuna jew il-persuni responsabbli fil-katina tat-tranzazzjonijiet."

9. L-artikolu 78 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 78 tal-Att prinċipali.

"Responsabbiltà tal-bejjiegh. 78. (1) Il-bejjiegh għandu jkun responsabbli lejn il-konsumatur għal kwalunkwe nuqqas ta' konformità eżistenti mal-konsenja tal-oġġetti u li jimmanifesta ruħu fi żmien sentejn minn dak inhar. Mingħajr preġudizzju għall-artikolu 73(4), dan is-subartikolu għandu japplika għal oġġetti b'elementi diġitali wkoll:

Iżda fil-każ ta' oġġetti b'elementi diġitali, li għalihom il-kuntratt tal-bejgħ jipprovdi għal provvista kontinwa tal-kontenut diġitali jew tas-servizz diġitali fuq perjodu ta' żmien, il-bejjiegh għandu jkun responsabbli wkoll għal kwalunkwe nuqqas ta' konformità tal-kontenut diġitali jew tas-servizz diġitali li jseħh jew jimmanifesta ruħu fi żmien sentejn mill-mument tal-konsenja tal-oġġetti b'elementi diġitali. Fejn il-kuntratt jipprovdi għal provvista kontinwa għal aktar minn sentejn, il-bejjiegh għandu jkun responsabbli għal kwalunkwe nuqqas ta' konformità tal-kontenut diġitali jew tas-servizz diġitali li jseħh jew jimmanifesta ruħu fil-perjodu li matulu l-kontenut jew is-servizz diġitali jrid jiġi pprovdut skont il-kuntratt ta' bejgħ.

(2) Il-perjodu ta' sentejn imsemmi fis-subartikolu (1) għandu jiġi sospiż sakemm idumu għaddejn in-negozjati bejn il-bejjiegh u l-konsumatur bil-għan li jintlaħaq ftehim amikevoli."

Żieda tal-artikolu 78A ġdid fl-Att prinċipali.

10. Immedjatement wara l-artikolu 78 tal-Att prinċipali għandu jiżdied l-artikolu 78A ġdid li ġej:

"Terminazzjoni tal-kuntratt tal-bejgħ.

78A. (1) Il-konsumatur għandu jeżerċita d-dritt li jittermina l-kuntratt tal-bejgħ permezz ta' dikjarazzjoni lill-bejjiegh li fiha jesprimi d-deċiżjoni tiegħu li jittermina l-kuntratt tal-bejgħ:

Iżda fejn in-nuqqas ta' konformità jkun jirrigwarda biss xi wħud mill-oġġetti kkonsenjati skont il-kuntratt tal-bejgħ u jkun hemm raġuni għat-terminazzjoni tal-kuntratt tal-bejgħ skont l-artikolu 74, il-konsumatur jista' jittermina l-kuntratt tal-bejgħ biss b'rabta ma' dawk l-oġġetti, u b'rabta ma' kwalunkwe oġġett ieħor li l-konsumatur ikun akkwista flimkien mal-oġġetti mhux konformi jekk il-konsumatur ma jistax ikun raġonevolment mistenni jaċċetta li jżomm biss l-oġġetti konformi.

(2) Meta l-konsumatur jittermina l-kuntratt tal-bejgħ sħiħ jew, skont il-proviso tas-subartikolu preċedenti, fir-rigward ta' xi wħud mill-oġġetti kkonsenjati taht il-kuntratt tal-bejgħ:

(a) il-konsumatur għandu jirritorna l-oġġetti lill-bejjiegh, għas-spejjeż tal-bejjiegh; u

(b) il-bejjiegħ għandu jrodd lura lill-konsumatur il-prezz imħallas għall-oġġetti meta jirċievi l-oġġetti jew l-evidenza pprovduta mill-konsumatur li jkun baġħat l-oġġetti lura."

11. L-artikolu 79 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 79 tal-Att prinċipali.

"Obbligu ta' notifika.

79. Sabiex jibbenefika mir-rimedji disponibbli taħt din it-Taqsima, il-konsumatur għandu jinnotifika lill-bejjiegħ fuq mezz durabbli dwar kwalunkwe nuqqas ta' konformità f'perjodu ta' mhux inqas minn xahrejn mid-data li fiha l-konsumatur ikun induna b'tali nuqqas ta' konformità."

12. L-artikolu 80 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 80 tal-Att prinċipali.

"Oneru tal-prova.

80. (1) Kwalunkwe nuqqas ta' konformità li jimmanifesta ruħu fi żmien sena mill-mument li fih ikunu ġew konsenjati l-oġġetti għandu jkun preżunt li kien jeżisti fil-mument tal-konsenja, sakemm ma jiġix ippruvat mod ieħor jew jekk din il-preżunzjoni tkun inkompatibbli man-natura tal-oġġetti jew man-natura tan-nuqqas ta' konformità. Dan is-subartikolu għandu japplika wkoll għal oġġetti b'elementi diġitali.

(2) Fil-każ ta' oġġetti b'elementi diġitali meta l-kuntratt tal-bejgħ jipprovdi għall-provvista kontinwa tal-kontenut diġitali jew tas-servizz diġitali fuq perjodu ta' żmien, l-oneru tal-prova fir-rigward ta' jekk il-kontenut diġitali jew is-servizz diġitali kienx konformi fil-perjodu ta' żmien imsemmi fil-proviso għall-artikolu 78(1) għandu jkun fuq il-bejjiegħ għal nuqqas ta' konformità li jimmanifesta fil-perjodu ta' żmien imsemmi f'dak l-artikolu."

13. L-artikolu 81 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 81 tal-Att prinċipali.

"Natura obbligatorja.

81. Sakemm mhux previst mod ieħor f'din it-Taqsima, kwalunkwe ftehim kuntrattwali li, għad-detriment tal-konsumatur, jeskludi l-applikazzjoni ta' din it-Taqsima, jidderoga minnhom, jew ivarja l-effetti tagħhom, qabel ma l-konsumatur jiġbed l-attenzjoni tal-bejjiegħ dwar in-nuqqas ta' konformità tal-oġġetti, ma għandux ikun vinkolanti fuq il-konsumatur."

14. L-artikolu 83 tal-Att prinċipali għandu jiġi sostitwit b'dan li

Sostituzzjoni tal-artikolu 83 tal-Att prinċipali.

għej:

"Rekwiziti għal
garanziji
kummerċjali.

83. (1) Id-dikjarazzjoni tal-garanzija kummerċjali għandha tiġi pprovduta lill-konsumatur fuq mezz durabbli mhux aktar tard mill-mument tal-konsenja tal-oġġetti. Id-dikjarazzjoni tal-garanzija kummerċjali għandha tkun espressa b'lingwaġġ ċar u li jinftiehem u għandha tinkludi dan li għej:

(a) li tkun formulata mill-inqas f'waħda mil-lingwi uffiċjali ta' Malta;

(b) li tispeċifika l-isem u l-indirizz tal-garanti, u tkun tiddikjara biċ-ċar x'ikun l-indirizz permanenti tal-post tal-kummerċ jew tan-negozju u l-isem tal-persuna li tkun qiegħda tipprovdi lill-konsumatur bil-garanzija kummerċjali;

(ċ) li tkun tispeċifika b'mod ċar x'ikun il-kontenut tal-garanzija inkluża l-firxa territorjali tagħha jekk din tkun waħda limitata kif ukoll id-durata tal-garanzija mid-data tax-xiri u jistgħu jiġu stipulati perjodi differenti għal komponenti differenti tal-oġġetti;

(d) li tkun tispeċifika b'mod ċar il-proċedura li trid tiġi segwita mill-konsumatur biex jikseb l-implimentazzjoni tal-garanzija kummerċjali. Jekk persuna li tkun qed tipprovdi garanzija kummerċjali tonqos milli tipprovdi lill-konsumatur bl-informazzjoni meħtieġa taħt dan il-paragrafu, hija sussegwentement tkun responsabbli għall-implimentazzjoni tal-garanzija kummerċjali għas-spejjeż tagħha;

(e) li tkun tispeċifika b'mod ċar jekk il-garanzija kummerċjali tkunx tista' tiġi trasferita lill-oħrajn. Kemm-il darba ma jiġix stipulat xort'oħra l-garanzija kummerċjali tista' wkoll tkun disponibbli għal sidien sussegwenti ta' dawk l-oġġetti li l-garanzija kummerċjali tkun tirreferi għalihom:

Iżda kemm-il darba l-garanzija kummerċjali ma tiddikjarax speċifikatament xort'oħra, għandu jinftiehem li fil-każ ta' oġġetti, il-garanzija kummerċjali tkun tkopri kull difett li jista' jirriżulta matul il-perjodu ta' garanzija;

(f) id-denominazzjoni tal-oġġetti li l-garanzija kummerċjali tapplika għalihom;

(g) dikjarazzjoni ċara li l-konsumatur huwa intitolat bil-liġi għal rimedji mill-bejjiegh bla ħlas fil-każ ta' nuqqas ta' konformità tal-oġġetti u li dawk ir-rimedji ma jkunux affettwati mill-garanzija kummerċjali; u

(h) it-termini tal-garanzija kummerċjali.

(2) In-nuqqas ta' konformità mas-subartikolu (1) ma għandux jaffettwa n-natura vinkolanti tal-garanzija kummerċjali għall-garanti."

15. L-artikolu 84 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 84 tal-Att prinċipali.

"Responsabbiltà taht garanzija kummerċjali.

84. Meta bejjiegh jew xi haddiehor jagħti garanzija kummerċjali lil konsumatur, irrispettivament meta jew kif din tingħata, għaldaqshekk dak il-bejjiegh jew xi hadd iehor ikun responsabbli lejn il-konsumatur għall-osservanza tat-termini u l-implimentazzjoni tal-garanzija kummerċjali bħallikieku kien il-garanti."

16. L-artikolu 90 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 90 tal-Att prinċipali.

"Effett vinkolanti ta' garanziji kummerċjali.

90. Kull garanzija kummerċjali għandha tkun vinkolanti fuq il-garanti skont il-kundizzjonijiet stabbiliti fid-dikjarazzjoni tal-garanzija kummerċjali u r-reklamar assoċjat disponibbli fiż-żmien tal-konklużjoni tal-kuntratt jew qabel il-konklużjoni tal-kuntratt. Skont il-kundizzjonijiet stabbiliti f'dan l-artikolu u mingħajr preġudizzju għal kwalunkwe liġi oħra applikabbli, fejn produttur joffri lill-konsumatur garanzija kummerċjali ta' durabbiltà għal ċerti oġġetti għal perjodu ta' żmien partikolari, il-produttur għandu jkun responsabbli direttament lejn il-konsumatur tul il-perjodu kollu tal-garanzija kummerċjali ta' durabbiltà għat-tiswija jew is-sostituzzjoni tal-oġġetti skont l-artikolu 75(2) sa (5). Il-produttur jista' joffri lill-konsumatur kundizzjonijiet aktar favorevoli fid-dikjarazzjoni tal-garanzija kummerċjali tad-durabbiltà:

Iżda jekk il-kundizzjonijiet stipulati fid-dikjarazzjoni tal-garanzija kummerċjali jkunu inqas vantaġġużi għall-konsumatur minn daww stipulati fir-reklamar assoċjat, il-garanzija kummerċjali għandha tkun vinkolanti skont il-kundizzjonijiet stipulati fir-reklamar relatat mal-garanzija kummerċjali, sakemm, qabel il-konkluzjoni tal-kuntratt, ir-reklamar assoċjat ma jkunx ġie kkoreġut bl-istess mod jew b'mod komparabbli bħalma jkun sar."

Sostituzzjoni tal-artikolu 92 tal-Att prinċipali.

17. L-artikolu 92 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

"Arranġamenti kuntrattwali oħra.

92. Din it-Taqsima ma għandhiex timpedixxi lill-bejjieġħ milli joffri lill-konsumatur arranġamenti kuntrattwali li jmorru lil hinn mill-protezzjoni prevista f'din it-Taqsima."

Sostituzzjoni tal-artikolu 93 tal-Att prinċipali.

18. L-artikolu 93 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

"Rimpjazzar ta' parts, servizz ta' tiswija meta l-oġġetti jeħtieġu manutenzjoni.

93. Jekk l-oġġetti li jkunu s-sugġett ta' kuntratt ta' bejgħ lil konsumatur ikunu ta' xorta li tista' teħtieġ manutenzjoni, jew possibbilment ir-rimpjazzar ta' parts, għaldaqshekk kemm il-parts għar-rimpjazzar kif ukoll is-servizz ta' tiswija adattat għandhom ikunu disponibbli għal żmien raġonevoli mid-data tal-kunsinna tal-oġġetti mill-bejjieġħ lill-konsumatur."

Thassir tal-artikolu 93A tal-Att prinċipali.

19. L-artikolu 93A tal-Att prinċipali għandu jiġi mħassar.

Sostituzzjoni tal-artikolu 93B tal-Att prinċipali.

20. L-artikolu 93B tal-Att prinċipali għandu jiġi sostitwit b'dan li

ġej:

"Għan ta' din it-Taqsima.

93B. L-għan ta' din it-Taqsima huwa dak li jimplimenta d-dispożizzjonijiet tad-Direttiva (UE) 2019/771 tal-Parlament Ewropew u tal-Kunsill tal-20 ta' Mejju 2019 dwar ċerti aspetti li jikkonċernaw kuntratti għall-bejgħ ta' oġġetti, li temenda r-Regolament (UE) 2017/2394 u d-Direttiva 2009/22/KE, u li tħassar id-Direttiva 1999/44/KE (Test b'rilevanza għaż-ŻEE) u d-dispożizzjonijiet ta' din it-Taqsima għandhom ikunu applikati u interpretati b'dan il-mod."

21. Immedjatament wara l-artikolu 93B tal-Att prinċipali għandu jiġi miżjud l-artikolu 93Ċ ġdid li ġej:

Żieda tal-artikolu 93Ċ ġdid fl-Att prinċipali.

"Riżerva.

93Ċ. Kuntratti konklużi qabel l-1 ta' Jannar 2022 għandhom ikunu regolati mid-dispożizzjonijiet ta' din it-Taqsima kif kienu fis-seħħ qabel id-dhul fis-seħħ tal-Att tal-2022 li jemenda l-Att dwar l-Affarijiet tal-Konsumatur."

Att Nru I tal-2022.

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru 533 tat-12 ta' Jannar, 2022.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

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I assent.

(L.S.)

GEORGE VELLA
President

14th January, 2022

ACT No. I of 2022

An ACT to amend the Consumer Affairs Act, Cap. 378.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

Short title and
commencement.
Cap. 378.

1. (1) The short title of this Act is the Consumer Affairs (Amendment) Act, 2022 and this Act shall be read and construed as one with the Consumer Affairs Act, hereinafter referred to as the "principal Act".

(2) This Act shall come into force on 1st January 2022.

Amendment of
article 72 of the
principal Act.

2. Article 72 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof:

(i) immediately before the definition "commercial guarantee" the following new definition shall be added:

" "consumer" means any natural person who, in relation to contracts covered by this Part, is acting for

purposes which are outside that person's trade, business, craft or profession;";

(ii) the definition "commercial guarantee" shall be substituted by the following:

" "commercial guarantee" means any undertaking by a seller or a producer (the guarantor) to the consumer, in addition to the seller's legal obligation relating to the guarantee of conformity, to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract;";

(iii) immediately after the definition "commercial guarantee" there shall be added the following new definitions:

" "compatibility" means the ability of the goods to function with hardware or software with which goods of the same type are normally used, without the need to convert the goods, hardware or software;

"digital content" means data which are produced and supplied in digital form;

"digital service" means:

(a) a service that allows the consumer to create, process, store or access data in digital form; or

(b) a service that allows the sharing of or any other interaction with data in digital form uploaded or created by the consumer or other users of that service;

"durability" means the ability of the goods to maintain their required functions and performance through normal use;

"durable medium" means any instrument which enables the consumer or the seller to store information addressed personally to that person in a way that is accessible for future reference, for a

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period of time adequate for the purposes of the information, and which allows the unchanged reproduction of the information stored;";

(iv) the definition "free of charge" shall be substituted by the following:

" "free of charge" means free of the necessary costs incurred in order to bring the goods into conformity, particularly the cost of postage, carriage, labour or materials;";

(v) immediately after the definition "free of charge" there shall be added the following new definition:

" "functionality" means the ability of the goods to perform their functions having regard to their purpose;";

(vi) the definition "goods" shall be substituted by the following:

" "goods" means:

(a) any tangible movable items of property:

Provided that water, gas and electricity shall be considered as goods within the meaning of this Part when they are put up for sale in a limited volume or a set quantity;

(b) tangible movable items that incorporate or are inter-connected with digital content or a digital service in such a way that the absence of that digital content or digital service would prevent the goods from performing their functions, hereinafter referred to as "goods with digital elements";";

(vii) immediately after the definition "guarantor" there shall be added the following new definition:

" "interoperability" means the ability of the goods to function with hardware or software different from those with which goods of the same type are normally used;";

(viii) the definition "producer" shall be substituted by the following:

" "producer" means a manufacturer of goods, an importer of goods into the European Union or any person purporting to be a producer by placing its name, trade mark or other distinctive sign on the goods;"

(ix) immediately after the definition "producer" there shall be added the following new definition:

" "public auction" means a method of sale where goods or services are offered by the seller to consumers, who attend or are given the possibility to attend the auction in person, through a transparent, competitive bidding procedure run by an auctioneer and where the successful bidder is bound to purchase the goods or services;"

(x) the definition "repair" shall be substituted by the following:

" "repair" means in the event of lack of conformity, the process of bringing goods into conformity with the sales contract;"

(xi) immediately after the definition "repair" there shall be added the following new definitions:

" "sales contract" means any contract under which the seller transfers or undertakes to transfer ownership of goods to a consumer, and the consumer pays or undertakes to pay the price thereof;

" "seller" means any natural person or any legal person, irrespective of whether privately or publicly owned, that is acting, including through any other person acting in that natural or legal person's name or on that person's behalf, for purposes relating to that person's trade, business, craft or profession, in relation to contracts covered by this Part.";

(b) sub-article (2) thereof shall be substituted by the following:

"(2) The provisions of this Part shall be applicable to sales contracts between a consumer and a seller.";

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(c) sub-article (3) thereof shall be substituted by the following:

"(3) Contracts between a consumer and a seller for the supply of goods to be manufactured or produced shall also be deemed sales contracts for the purposes of this Part.";

(d) immediately after sub-article (3) thereof there shall be added the following new sub-articles (4) and (5):

"(4) This Part shall not apply to contracts for the supply of digital content or digital services. It shall, however, apply to digital content or digital services which are incorporated in or inter-connected with goods, as defined in paragraph (b) of the definition "goods" in sub-article (1) and are provided with the goods under the sales contracts, irrespective of whether such digital content or digital service is supplied by the seller or by a third party. In the event of doubt as to whether the supply of incorporated or inter-connected digital content or an incorporated or inter-connected digital service forms part of the sales contract, the digital content or digital service shall be presumed to be covered by the sales contract.

(5) This Part shall not apply to:

(a) any tangible medium which serves exclusively as a carrier for digital content;

(b) any goods sold by way of execution or otherwise by authority of law; or

(c) contracts for the sale of second-hand goods sold at public auction:

Provided that in the case referred to in paragraph (c), clear and comprehensive information that the rights deriving from this Part do not apply shall be made easily available to consumers by auctioneers as defined in the Auctioneers Act."

Cap. 342.

Substitution of article 73 of the principal Act.

3. Article 73 of the principal Act shall be substituted by the following:

"Subjective requirements for conformity.

73. (1) Sellers shall deliver goods to the consumer that conform with the sales contract, which goods shall, in particular, where applicable:

(a) be of the description, type, quantity and quality, and possess the functionality, compatibility, interoperability and other features, as required by the sales contract;

(b) be fit for any particular purpose for which the consumer requires them and which the consumer made known to the seller at the latest at the time of the conclusion of the sales contract, and in respect of which the seller has given acceptance;

(c) be delivered with all accessories and instructions, including on installation, as stipulated by the sales contract; and

(d) be supplied with updates as stipulated by the sales contract.

Objective requirements for conformity.

(2) In addition to complying with any subjective requirement for conformity with sub-article (1) the goods shall also:

(a) be fit for the purposes for which goods of the same type would normally be used, taking into account, where applicable, any law, technical standards or, in the absence of such technical standards, applicable sector-specific industry codes of conduct;

(b) where applicable, be of the quality and correspond to the description of a sample or model that the seller made available to the consumer before the conclusion of the contract;

(c) where applicable, be delivered along with such accessories, including packaging, installation instructions or other instructions, as the consumer may reasonably expect to receive; and

(d) be of the quantity and possess the qualities and other features, including in relation to durability, functionality, compatibility and security normal for goods of the same type and which the consumer may reasonably expect given the nature of the goods and taking into account any public statement made by or on behalf of the seller, or other persons in previous links of the chain of transactions, including the producer, particularly in advertising or on labelling.

(3) The seller shall not be bound by public statements, as referred to in sub-article (2)(d) if the seller shows that:

(a) the seller was not, and could not reasonably have been, aware of the public statement in question;

(b) by the time of conclusion of the contract, the public statement had been corrected in the same way as, or in a way comparable to how, it had been made; or

(c) the decision to buy the goods could not have been influenced by the public statement.

(4) In the case of goods with digital elements, the seller shall ensure that the consumer is informed of and supplied with updates, including security updates, that are necessary to keep those goods in conformity, for the period of time:

(a) that the consumer may reasonably expect given the type and purpose of the goods and the digital elements, and taking into account the circumstances and nature of the contract, where the sales contract provides for a single act of supply of the digital content or digital service; or

(b) indicated in the proviso of article 78(1) where the sales contract provides for a continuous supply of the digital content or digital service over a period of time.

(5) Where the consumer fails to install within a reasonable time updates supplied in accordance with sub-article (4), the seller shall not be liable for any lack of conformity resulting solely from the lack of the relevant update, provided that:

(a) the seller informed the consumer about the availability of the update and the consequences of the failure of the consumer to install it; and

(b) the failure of the consumer to install or the incorrect installation by the consumer of the update was not due to shortcomings in the installation instructions provided to the consumer.

(6) There shall be no lack of conformity within the meaning of sub-article (2) or (4) if, at the time of the conclusion of the sales contract the consumer was specifically informed that a particular characteristic of the goods was deviating from the objective requirements for conformity laid down in sub-article (2) or (4) and the consumer expressly and separately accepted that deviation when concluding the sales contract.

Incorrect installation of the goods.

(7) Any lack of conformity resulting from the incorrect installation of the goods shall be regarded as lack of conformity of the goods if:

(a) the installation forms part of the sales contract and was carried out by the seller or under the seller's responsibility; or

(b) the installation, intended to be carried out by the consumer, was done by the consumer and the incorrect installation was due to shortcomings in the installation instructions provided by the seller or, in the case of goods with digital elements, provided by the seller or by the supplier of the digital content or digital service.

(8) Nothing in this article shall prejudice the application of article 73A."

4. Immediately after article 73 of the principal Act there shall be added the following new article 73A:

Addition of new article 73A to the principal Act.

"Third party rights.

73A. Where a restriction resulting from a violation of any right of a third party, in particular intellectual property rights, prevents, or limits the use of the goods in accordance with sub-articles (1) to (6) of article 73, the consumer is entitled to the remedies established for lack of conformity in article 74(1), (2), (3), (4), in article 75(1) and in article 76(2), unless the law provides for the nullity or rescission of the sales contract in such cases."

5. Article 74 of the principal Act shall be substituted by the

Substitution of article 74 of the principal Act.

following:

"Remedies for lack of conformity.

74. (1) In the event of a lack of conformity, the consumer shall be entitled to have the goods brought into conformity or to receive a proportionate reduction in the price, or to terminate the contract, under the conditions set out in this article and in article 75.

(2) The seller may refuse to bring the goods into conformity if repair and replacement are impossible or would impose costs on the seller that would be disproportionate, taking into account all circumstances including those mentioned in paragraphs (a) and (b) of sub-article (1) of article 75.

(3) The consumer shall be entitled to either a proportionate reduction of the price in accordance with article 76(1) or the termination of the sales contract in accordance with article 78A in any of the following cases:

(a) the seller has not completed repair or replacement or, where applicable, has not completed repair or replacement in accordance with article 75(3) and (4), or the seller has refused to bring the goods into conformity in accordance with sub-article (4);

(b) a lack of conformity appears despite the seller having attempted to bring the goods into conformity;

(c) the lack of conformity is of such a serious nature as to justify an immediate price reduction or termination of the sales contract; or

(d) the seller has declared, or it is clear from the circumstances, that the seller will not bring the goods into conformity within a reasonable time, or without significant inconvenience for the consumer.

(4) The consumer shall have the right to withhold payment of any outstanding part of the price or a part thereof until the seller has fulfilled the seller's obligations under this Part."

Substitution of article 75 of the principal Act.

6. Article 75 of the principal Act shall be substituted by the

following:

"Repair or replacement of goods.

75. (1) In order to have the goods brought into conformity, the consumer may choose between repair and replacement, unless the remedy chosen would be impossible or, compared to the other remedy, would impose costs on the seller that would be disproportionate, taking into account all circumstances, including:

(a) the value the goods would have if there were no lack of conformity;

(b) the significance of the lack of conformity; and

(c) whether the alternative remedy could be provided without significant inconvenience to the consumer.

(2) Repairs or replacements shall be carried out:

(a) free of charge;

(b) within a reasonable period of time from the moment the seller has been informed by the consumer about the lack of conformity; and

(c) without any significant inconvenience to the consumer, taking into account the nature of the goods and the purpose for which the consumer required the goods.

(3) Where the lack of conformity is to be remedied by repair or replacement of the goods, the consumer shall make the goods available to the seller. The seller shall take back the replaced goods at the seller's expense.

(4) Where a repair requires the removal of goods that had been installed in a manner consistent with their nature and purpose before the lack of conformity became apparent, or where such goods are to be replaced, the obligation to repair or replace the goods shall include the removal of the non-conforming goods, and the installation of replacement goods or repaired goods, or bearing the costs of that removal and installation.

(5) The consumer shall not be liable to pay for normal use made of the replaced goods during the period prior to their replacement."

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Substitution of article 76 of the principal Act.

7. Article 76 of the principal Act shall be substituted by the following:

"Price reduction.

76. (1) The reduction of price shall be proportionate to the decrease in the value of the goods which were received by the consumer compared to the value the goods would have if they were in conformity.

(2) The consumer shall not be entitled to terminate the contract if the lack of conformity is only minor. The burden of proof with regard to whether the lack of conformity is minor shall be on the seller."

Substitution of article 77 of the principal Act.

8. Article 77 of the principal Act shall be substituted by the following:

"Right of redress.

77. Where the seller is liable to the consumer because of a lack of conformity resulting from an act or omission, including omitting to provide updates to goods with digital elements in accordance with article 73(4), by a person in previous links of the chain of transactions, the final seller shall be entitled to pursue remedies against the person or persons liable in the chain of transactions."

Substitution of article 78 of the principal Act.

9. Article 78 of the principal Act shall be substituted by the following:

"Liability of the seller.

78. (1) The seller shall be liable to the consumer for any lack of conformity which exists at the time when the goods were delivered and which becomes apparent within two years of that time. Without prejudice to article 73(4), this sub-article shall also apply to goods with digital elements:

Provided that in the case of goods with digital elements, where the sales contract provides for a continuous supply of the digital content or digital service over a period of time, the seller shall also be liable for any lack of conformity of the digital content or digital service that occurs or becomes apparent within two years of the time when the goods with digital elements were delivered. Where the contract provides for a continuous supply for more than two years, the seller shall be liable for any lack of conformity of the digital content or digital service that occurs or becomes apparent within the period of time during which the digital content or digital service is to be supplied under the sales contract.

(2) The two-year period mentioned in sub-article (1) shall be suspended for the duration of negotiations carried on between the seller and the consumer with a view to an amicable settlement."

10. Immediately after article 78 of the principal Act there shall be added the following new article 78A:

Addition of new article 78A to the principal Act.

"Termination of the sales contract.

78A. (1) The consumer shall exercise the right to terminate the sales contract by means of a statement to the seller expressing the decision to terminate the sales contract:

Provided that where the lack of conformity relates to only some of the goods delivered under the sales contract and there is a ground for termination of the sales contract pursuant to article 74, the consumer may terminate the sales contract only in relation to those goods, and in relation to any other goods which the consumer acquired together with the non-conforming goods if the consumer cannot reasonably be expected to accept to keep only the conforming goods.

(2) Where the consumer terminates a sales contract as a whole or, in accordance with the proviso in the preceding sub-article, in relation to some of the goods delivered under the sales contract:

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(a) the consumer shall return to the seller, at the seller's expense, the goods; and

(b) the seller shall reimburse to the consumer the price paid for the goods upon receipt of the goods or of evidence provided by the consumer of having sent back the goods."

Substitution of article 79 of the principal Act.

11. Article 79 of the principal Act shall be substituted by the following:

"Obligation to notify.

79. In order to benefit from the remedies available under this Part, a consumer shall notify the seller on a durable medium of any lack of conformity within a period of at least two months from the date on which the consumer detected such lack of conformity."

Substitution of article 80 of the principal Act.

12. Article 80 of the principal Act shall be substituted by the following:

"Burden of proof.

80. (1) Any lack of conformity which becomes apparent within one year of the time when the goods were delivered shall be presumed to have existed at the time when the goods were delivered, unless proved otherwise or unless this presumption is incompatible with the nature of the goods or with the nature of the lack of conformity. This sub-article shall also apply to goods with digital elements.

(2) In the case of goods with digital elements where the contract of sale provides for the continuous supply of the digital content or digital service over a period of time, the burden of proof with regard to whether the digital content or digital service was in conformity within the period of time referred to in the proviso of article 78(1) shall be on the seller for a lack of conformity which becomes apparent within the period of time referred to in that article."

Substitution of article 81 of the principal Act.

13. Article 81 of the principal Act shall be substituted by the

following:

"Mandatory nature.

81. Unless otherwise provided for in this Part, any contractual agreement which, to the detriment of the consumer, excludes the application of this Part, derogates from them, or varies their effect, before the lack of conformity of the goods is brought to the seller's attention by the consumer, shall not be binding on the consumer."

14. Article 83 of the principal Act shall be substituted by the following:

Substitution of article 83 of the principal Act.

"Requirements for commercial guarantees.

83. (1) A commercial guarantee statement shall be provided to the consumer on a durable medium at the latest at the time of the delivery of the goods. The commercial guarantee statement shall be expressed in plain, intelligible language and it shall include the following:

(a) be formulated in at least one of the official languages of Malta;

(b) specify the name and address of the guarantor, and clearly state the permanent address of the place of trade or business and the name of the person who is supplying the consumer with the commercial guarantee;

(c) clearly state the contents of the guarantee including its territorial scope if this is limited as well as the duration of the guarantee from the date of purchase and different periods may be stipulated for different components of any goods;

(d) clearly specify the procedure to be followed by the consumer to obtain the implementation of the commercial guarantee. If a person who, in supplying a commercial guarantee, fails to provide the consumer with the information required under this paragraph, he shall then be responsible for the execution of the commercial guarantee at his expense;

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(e) clearly state whether the commercial guarantee may be transferred to others. Unless otherwise stipulated the commercial guarantee may also be availed of by any subsequent owners of the goods to which the commercial guarantee refers:

Provided that unless the commercial guarantee specifically states otherwise, it shall be assumed that in the case of goods, the commercial guarantee covers any defects that may result during the period of guarantee;

(f) the designation of the goods to which the commercial guarantee applies;

(g) a clear statement that the consumer is entitled by law to remedies from the seller free of charge in the event of a lack of conformity of the goods and that those remedies are not affected by the commercial guarantee; and

(h) the terms of the commercial guarantee.

(2) Non-compliance with sub-article (1) shall not affect the binding nature of the commercial guarantee for the guarantor."

Substitution of article 84 of the principal Act.

15. Article 84 of the principal Act shall be substituted by the following:

"Liability under a commercial guarantee.

84. Where a seller or any other person gives a commercial guarantee to a consumer, irrespective of when or how it is given, then that seller or other person shall be liable to the consumer for the observance of the terms and execution of the commercial guarantee as if he were the guarantor."

Substitution of article 90 of the principal Act.

16. Article 90 of the principal Act shall be substituted by the

following:

"Binding effect of commercial guarantees.

90. Any commercial guarantee shall be binding on the guarantor under the conditions laid down in the commercial guarantee statement and associated advertising available at the time, or before the conclusion, of the contract. Under the conditions laid down in this article and without prejudice to any other applicable law, where a producer offers to the consumer a commercial guarantee of durability for certain goods for a certain period of time, the producer shall be liable directly to the consumer, during the entire period of the commercial guarantee of durability for repair or replacement of the goods in accordance with article 75(2) to (5). The producer may offer to the consumer more favourable conditions in the commercial guarantee of durability statement:

Provided that if the conditions laid out in the commercial guarantee statement are less advantageous to the consumer than those laid down in the associated advertising, the commercial guarantee shall be binding under the conditions laid down in the advertising relating to the commercial guarantee, unless, before the conclusion of the contract, the associated advertising was corrected in the same way or in a comparable way to that in which it was made."

17. Article 92 of the principal Act shall be substituted by the following:

Substitution of article 92 of the principal Act.

"Other contractual arrangements.

92. This Part shall not prevent the seller from offering to the consumer contractual arrangements that go beyond the protection provided for in this Part."

18. Article 93 of the principal Act shall be substituted by the

Substitution of article 93 of the principal Act.

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following:

"Replacement parts, repair service where goods require maintenance.

93. If the goods being the object of a sales contract to a consumer are of a nature that may require maintenance, or possible replacement of parts, then replacement parts and appropriate repair service must be made available for a reasonable time from the date of the delivery of the goods by the seller to the consumer."

Deletion of article 93A of the principal Act.

19. Article 93A of the principal Act shall be deleted.

Substitution of article 93B of the principal Act.

20. Article 93B of the principal Act shall be substituted by the following:

"Purpose of this Part.

93B. The purpose of this Part is to implement the provisions of Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC (Text with EEA relevance) and the provisions of this Part shall be applied and interpreted accordingly."

Addition of new article 93C to the principal Act.

21. Immediately after article 93B of the principal Act there shall be added the following new article 93C:

"Saving.

Act No. I of 2022.

93C. Contracts concluded before the 1 January 2022 shall be regulated by the provisions of this Part as in force prior to the entry into force of the Consumer Affairs (Amendment) Act, 2022."

Passed by the House of Representatives at Sitting No. 533 of the
12th January, 2022.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

