

ECC Malta wishes you all the best for the New Year! 2023 is sure to start with its first consumer boom in Malta with the first sales event of the year. January is expected to bring fabulous discounts on clothes, small appliances, household goods, and much more. This first edition is intended to provide information on what to look out for to take advantage of these sales safely.



In this e-newsletter, you will also find new developments from the European Court of Justice regarding long delays in connecting flights, including those operated by different airlines; one of our success stories and recent news on Liability Regulations, including Liability for damages caused by Artificial Intelligence.

First Sale event of the year: January Sales

January is synonymous with that time of the year when consumers go shopping and take advantage of the various promotional offers and discounts. For us consumers, the sales period is an opportunity to get more value due to the lower prices on the market. Shop owners sometimes see the clearance sale as an opportunity to sell old stock and make room for new collections.

While shopping, consumers should remember that their rights are not reduced just because they buy goods at a discounted price. During sale events, you still enjoy the same legal rights; the goods purchased must always conform to the description and fit their purpose. If the goods purchased do not comply with these standards, you have the right to a remedy.

Consumers have the right to have the goods repaired or replaced. Consumers are entitled to a monetary refund if repair

or replacement is impossible. Hence, any claims that the goods sold during sales cannot be returned or refunded if defective or not in conformity are illegal and unenforceable. Keep the fiscal receipt for any goods purchased, as it will serve as proof if the product develops a defect and you need a remedy. Such rights do not apply when you are informed before the purchase is finalised that the goods are 'shop soiled'. Thus, where certain imperfections or damages are pointed out, you will not be able to complain about them once the sale is concluded. However, if a different fault develops, you still have the same rights as if the shop owner sold you the product at its original price (before the sale). It is always your responsibility to check the goods before concluding the sale. Defects that consumers could have noticed during the purchase are usually not covered by the law.

During sales, certain sellers may change their return policies. Remember that shop owners have no legal obligation to apply such policies when consumers shop in person. Thus, as this is a voluntary policy, some

shop owners may change their return policy during the sales period. It is the consumer's responsibility to double-check with the shop owner if there are any changes before they purchase the particular item. Ideally, shop owners advise consumers about any changes to their policy to avoid unnecessary complaints that may tarnish their reputation.

You should not be easily impressed by signs and advertisements promoting substantial discounts. As consumers, we should check whether the claimed discounts are genuine so as not to fall for false bargains. Where the shop compares with previous prices, the latter should be the last price at which the goods were available before the sales period. It is misleading and illegal for shops to advertise a sale of 50% on everything when this reduction applies only to specific items.



Success Story



Eric moved into a new house and purchased their new kitchen from Italy. Upon choosing their new appliances, the seller assured them that the fridge-freezer would be non-frost. However, just three weeks after the seller installed the kitchen, the consumer discovered that the fridge-freezer was different from what was described. Later a technician confirmed that the model given to them was not a non-frost model. Unfortunately, this was only one issue; there were other issues, like the kitchen countertop's thickness, the splashback's wrong dimensions, and the damaged countertop.

The consumer contacted the seller but was unsuccessful; thus, he requested the help of ECC

Malta. He provided us with photos as evidence and asked us to replace the fridge-freezer with a non-frost model, fix the splashback and replace the damaged countertop.

"However, ECC Italy explained to him his obligations at law and forwarded all the evidence provided by the consumer."



ECC Malta shared this complaint with our Italian counterparts, who contacted the trader. At first, the trader did not want to provide a remedy as he had been trying to blame the consumers. However, ECC Italy explained to him his obligations at law and forwarded all the evidence provided by the consumer. After several communications between the trader and the case handler, the trader agreed to replace the fridge-freezer, the damaged countertop, and the splashback if the consumer returned the fridge-freezer, which was still in his possession. The consumers agreed to return the appliance to the seller and shared the delivery expenses.

Our collaboration with ECC Italy meant that the consumers could finally enjoy their new kitchen as ordered.

News

Court Judgement: The right to compensation for air passengers subject to long delays applies to connecting flights of different airlines.

Recently, the Court in C-436/21 concluded that the right to compensation for air passengers subject to long delays applies to connecting flights made up of flights operated by separate operating air carriers. It means that it is irrelevant that there is no legal relationship between the airlines in situations where flights are combined by a travel agency charging an overall price.

The Court pointed out that a 'connecting flight' must be understood as referring to two or more flights constituting a single unit concerning the right to compensation as stipulated in Regulation 261/2004.



The Court of Justice held that the concept of 'connecting flights' also includes **flights operated by different operating air carriers. Once a travel agency combines separate flights, even though the air carriers have no legal relationship, charge an overall price, and issue a single ticket to the consumer, it shall be taken as a connecting flight.**

In this case, the passenger's ticket constituted proof that the reservation for the entire journey had been registered by a tour operator based on a single reservation and thus a 'connecting flight'. Different operating air carriers operated the 'connecting flight' at issue; hence, no legal relationship between them.

The Court considered that there is no provision in the Regulation concerning compensation of air passengers, which requires the obligation of a legal relationship between the different operating air carriers operating the flights in a connecting flight. Such an additional

condition would also be contrary to the objective of ensuring a high level of protection for passengers, as it would be capable of limiting the right to compensation where there is a long delay of the flights. Thus, the Court decided that one must interpret Article 2(h) of the Regulation to mean:

"that the concept of a 'connecting flight' covers a transport operation made up of a number of flights operated by separate operating air carriers which do not have a specific legal relationship, where those flights have been combined by a travel agency which has charged an overall price and issued a single ticket for that operation, with the result that a passenger departing from an airport located in the territory of a Member State who suffers a long delay to the arrival at the destination of the last flight may rely on the right to compensation pursuant to Article 7 of that regulation."



Liability Directives to include damages caused by AI systems

Artificial Intelligence is a machine's ability to perform cognitive functions as humans do, such as perceiving, learning, reasoning, and solving problems quickly and more efficiently. In simpler terms, Artificial Intelligence is the science of training machines to imitate or reproduce human tasks. It is a cutting-edge technology dealing with complex data that a human would find almost impossible to handle.

There are various Artificial Intelligence methods, but they process large amounts of data much faster and make predictions more accurately than humanly possible. Data that could take a human a month to analyse and process, AI systems take only seconds.

Two proposals have been brought to bring liability rules up to today's standard:

1. Modernising existing rules on the liability of manufacturers for defective products, ranging from smart technology to pharmaceuticals.
2. Uniform liability rules for Artificial Intelligence (AI) systems.

Since 1985, the **Product Liability Directive** has provided EU citizens with a safety net to claim compensation when they suffered damage caused by defective products. After 40 years, the Directive needed an overhaul.

The revised Directive updates and reinforces the well-established rules, adapting them to products in the circular economy and digital age. Thus, consumers who see their smart devices or home systems become unsafe due to a flawed software update or cybersecurity issue will now also be able to seek redress from the manufacturer. Moreover, when consumers are injured by products

that are not safe and imported from countries outside the EU, can turn to the importer or the manufacturer's EU representative for compensation.

The new AI liability Directive complements the Artificial Intelligence Act. The latter aims to prevent damage and reduce risks, while the new Directive deals with what needs to be done in case there is damage. It introduces two main features:

- 1. Presumption of causality** – victims will not have to explain in detail how a specific fault or omission in AI systems caused the harm
- 2. Right of access to evidence from companies**

Generally, victims should encounter fewer barriers in getting compensation, but at the same time, businesses should get more legal guarantees and economic incentives to comply with safety rules.



European Consumer Centre Malta

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