AUSTRIA

Enforcement PDF (220 Kb) en

I.ADMINISTRATIVE ENFORCEMENT

Which administrative mechanisms are available to enforce the Directives?

Directives 2005/29 (Unfair Commercial Practices) and 2006/114 (Misleading and Comparative Advertising) are implemented by the Austrian Unfair Competition Act (Bundesgesetz gegen den unlauteren Wettbewerb - UWG). In general, it provides for enforcement through court action in form of cease-and-desist orders supported by preliminary injunctions. Only certain types of unfair practices as set out in Part 2 of the UWG (§§ 27-34) may be sanctioned by the Regional Administrative Authority with a fine of up to EUR 2,900 provided they do not fall within the scope of criminal court sanctions. The provisions regarding administrative enforcement have already been in force prior to the implementation of the Directives.

Directive 2011/83 (Consumer Rights) is implemented by the Distance and Off-Premises Contracts Act (Bundesgesetz über Fernabsatz- und außerhalb von Geschäftsräumen geschlossene Verträge - FAGG). Certain infringements of the entrepreneur as set out in § 19 FAGG may be sanctioned with a fine of up to EUR 1,450 provided they do not fall within the scope of criminal court sanctions or are punishable under more severe administrative sanctions. Note, infringements could also be caught as UWG infringements under certain circumstances.

Directive 98/6 (Price Indication) is implemented by the Price Labelling Act (Preisauszeichnungsgesetz - PrAG) which is setting out in § 15 administrative fines of up to EUR 1,450 in case of violating price labelling provisions. Note, infringements could also be considered UWG infringements under certain circumstances.

Directive 2008/122 (Timeshare) is implemented by the Timeshare Act (Teilzeitnutzungsgesetz - TNG). Certain infringements of the act may be sanctioned with an administrative fine provided they are not a criminal offence or fall within the scope of other more severe administrative acts. Note, infringements could also be considered UWG infringements under certain circumstances.

Directives 1999/44 (Consumer Sales and Guarantees) and 93/13 (Unfair Contract Terms) are implemented by the Consumer Protection Act (Konsumentenschutzgesetz - KSchG). In general, it provides for enforcement through court actions in form of cease-and-desist order. Only the infringement of information obligations and the obligation to provide consumers with information on their withdrawal rights as set out in § 32 of the KSchG may be sanctioned by the competent authority with a fine of up to EUR 1,450 provided they do not fall within the scope of criminal court sanctions. Note, infringements could also be considered UWG infringements under certain circumstances.

Directive 2015/2302 was implemented by the Package Travel Act (PRG) and the Package Travel Regulation (PRVO). It replaced Directive 90/314 and its transpositions in the Consumer Protection Act (KSchG). Travellers are in general entitled to a reasonable price reduction for the periods of the journey affected by a non-conforming performance and may also claim compensation in the event of incurring damages. Certain infringements by the seller as set out in § 19 PRG may be sanctioned with a fine of up to EUR 1,450, provided they are not punishable under more severe administrative sanctions. Note, violations may also be subject to UWG or KSchG infringement rules under certain circumstances.

The provisions of Directive 2009/22 (Injunction Directive) have already been implemented by the above-mentioned implementation laws, such as Consumer Protection Act, Unfair Competition Act and the Distance and Off-Premises Contracts Act, at the time the Injunction Directive came into force. Therefore, there was no need to implement them again.

Who can file administrative complaints? Can investigations be initiated ex officio?

Administrative proceedings are usually initiated ex officio but may also be initiated by other entities or persons.

Do any specific procedural requirements apply to filing administrative complaints?

The Austrian implementation laws of the Directives in scope do not provide specific procedural requirements in respect to filing administrative complaints.

Do the administrative authorities have an obligation to investigate the complaint?

The Austrian implementation laws of the Directives in scope do not provide for such obligations.

Are there any specific requirements regarding the provision of evidence to the competent authorities?

None of the Austrian implementation laws of the Directives in scope contain provisions of evidence.

II. ENFORCEMENT THROUGH COURT ACTION

Which court actions are available to enforce the Directives?

In general, a claim for civil damages under § 1293 et. seq. of the General Civil Law Act (Allgemeines Bürgerliches Gesetzbuch - ABGB) may be filed.

The action for cease-and-desist (§§ 14, 15 UWG) is the main legal remedy to enforce Directives 2005/29 and 2006/114. Pursuant to § 16 UWG, an action for damages includes the claim for damages. In practice, claims for damages are a weak remedy due to the difficulty to prove the actual damage. To our knowledge, there is no decision known that ever has awarded damages. In case of a legitimate interest, the successful party of an action is entitled to publish the favourable judgement in an adequate media at the cost of the losing party. The party instituting legal action has the right to request information from postal or telecommunication service providers about name and address of users if there are reasonable grounds for suspecting that a user is engaging in unfair commercial practices (§ 14a UWG).

The action for cease-and-desist (§§ 28, 28a KSchG) is also the main legal remedy to enforce Directives 1999/44 and 93/13.

Price reduction and compensation for damages (§ 12 PRG) are the main legal remedies to enforce Directive 2015/2302. The claim for damages also includes compensation for non-material damage (e.g., loss of holiday enjoyment; § 12 para 2 sentence 2 PRG). The level of protection that already existed in Austria under the old Package Travel Directive (90/314) is thus maintained.

Who can start a court action?

Anyone who has suffered damage is able to initiate a claim for civil damages under § 1293 of the ABGB.
As regards Directives 2005/29 and 2006/114, competitors, associations promoting economic interests of business operators as far as they represent interests that are effected by said practices, the Federal Chamber of Employees (Bundeskammer für Arbeiter und Angestellte), the Federal Chamber of Commerce (Wirtschaftskammer Österreich), the Assembly of the Presidents of the Austrian Chambers for Agriculture (Präsidentenkonferenz der Landwirtschaftskammern Österreichs), the Austrian Trade Union (Österreichischer Gewerkschaftsbund), the Federal Competition Authority (Bundeswettbewerbsbehörde) and the Association for Consumer Information (Verein für Konsumenteninformation), in case of unfair B2C commercial practices, can start actions for injunctive relief due to unfair commercial practices.
A cease-and-desist order pursuant to the KSchG (to enforce Directives 1999/44 and 93/13) may be filed by the Federal Chamber of Commerce (Wirtschaftskammer Österreich), Federal Chamber for Employees (Bundesarbeitskammer), the Austrian Technical Chambers of Agricultural Workers (Österreichischer Landarbeiterkammertag), the Assembly of the Presidents of the Austrian Chambers for Agriculture (Präsidentenkonferenz der Landwirtschaftskammern Österreichs), the Austrian Trade Union (Österreichischer Gewerkschaftsbund), the Association for Consumer Information (Verein für Konsumenteninformation) and the Austrian Council of Senior Citizens (Österreichischer Seniorenrat).
In relation to Directive 2015/2302, travellers may claim a price reduction for a period of a package travel if that period is affected by a non-conforming performance.
Furthermore, consumers may file a claim for damages or file an action to rescind the contract according to the KSchG and ABGB.

Can court actions be initiated by competitors?
Pursuant to the implementation laws of the Directives in scope, but for Directives 2005/29 and 2006/114, competitors are not able to initiate court actions, unless the infringement of these Directives also constitutes an infringement of the UWG.
Due to this, the UWG allows actions by competitors even if they are not directly affected by the unfair commercial practice.
In a general claim for civil damages, competitors may have legal standing if they have suffered damage.

Can the case be handled through an accelerated procedure?
Where the implementation laws of Directives 2005/29 and 2006/114 are concerned, an action for injunctive relief may be filed together with a motion for a cease-and-desist order pursuant to § 24 UWG. This is an effective provisional remedy to stop the unlawful practice until the regular action to cease-and-desist is decided in full scale main proceedings by a legally binding judgement. The advantage of filing for an interim injunction is that the facts do not have to be fully evidenced but only furnished on a prima facie basis.

Are there any specific requirements regarding the provision of evidence to the court?
Pursuant to § 1 (5) UWG (implementing Directives 2005/29 and 2006/114) the entrepreneur has to establish the accuracy of factual claims in connection with a commercial practice where, given the particular facts and circumstances of the case, such a requirement appears appropriate in view of the legitimate interests of the business operator and other market participants. However, such requests under § 1 (5) UWG have so far taken place rather rarely.
In line with Austrian Civil Procedure Law, the plaintiff has to allege and prove all relevant facts to establish the claim, and unless a violation has already taken place, the imminent risk of an unfair commercial practice has to occur.
Pursuant to § 12 (1) PRG (implementing Directive 2015/2302), the travel agent must prove that the traveller was the cause of the non-conforming performance. If they succeed in proving this, the traveller is not entitled to a price reduction.
Otherwise, the implementation laws do not provide specific requirements regarding the provision of evidence.

Are there specific procedural reliefs for consumers or consumer associations?
Pursuant to § 28 para. 3 KSchG, an entrepreneur using general terms and conditions, or standard contractual forms has to provide them to the institutions entitled to file an action (see above) if the institutions can show that they need to know the general terms and conditions or standard contractual forms in order to pursue consumer interests.
On the other hand, § 14 UWG is more restrictive when stating that consumer associations may start actions for injunctive relief only in case of unfair B2C commercial practices.

III. SANCTIONS

What are the possible civil sanctions and remedies for the infringement of the provisions of the Directives?
The competent civil court can award damages in the framework of a claim for civil damages based on § 1293 et.seq. of the ABGB. These damages, however, should be interpreted as an indemnifying measure rather than as a sanction.
The breach of certain provisions of the Directives in scope may also result in the termination of the contract or price reductions pursuant to Austrian general civil law. However, these remedies do not directly result from the infringement of the Directives in scope.
Furthermore, for Directives 2005/29 and 2006/114 on injunctive relief, removal of the impairment and publication of the judgement are the available civil remedies.
For Directives 1999/44 and 93/13, the available remedy is an injunctive relief.
The implementation laws of Directives 98/6 and 2008/122 do not provide civil sanctions for infringements of their provisions.
The available remedies for Directive 2015/2302 are compensation for damages and price reduction (§ 12 PRG).
All of these civil sanctions may be imposed by the competent civil courts.

What are the possible criminal sanctions for the infringement of the Directives' provisions?
According to Directives 2005/29 and 2006/114, a monetary fine of up to 180 per diem may be imposed on a person who, in the conduct of business, knowingly engages for competitive purposes in aggressive or misleading commercial practices in a public announcement or in any media by a court (§ 4 (1) UWG). Imprisonment of up to three months or a monetary fine of up to 180 per diem may be imposed on a person who offers a gift or other advantages to an employee of a business in order to receive privileged treatment due to an unfair conduct of the employee (§ 10 UWG). The sanction may also be imposed on the employee who demands or accepts the advantage. The same sanctions may also be imposed on an employee or a competitor who violates trade secrets (§§ 11 and 12 UWG). Please note that such infringements could additionally be criminal offences under the Austrian Criminal Act.
The other implementation laws of the Directives in scope do not provide criminal sanctions for the infringement of their provisions.
A criminal sanction may only be imposed by the competent criminal courts.

What are the possible administrative sanctions for the infringement of the Directives' provisions?

A fine of up to EUR 2,900 may be imposed by the Regional Administrative Authority for infringements regarding the prohibition to conclude contracts with a pyramid promotional scheme and to distribute goods following games of chance, the prohibition to announce a sale without authorisation of the Regional Administrative Authority, the prohibition of displaying not granted quality marks or the violation of regulations regarding labelling.

A fine of up to EUR 1,450 may be imposed by the competent authority for infringements of certain obligations as set out in § 19 FAGG (Directive 2011/83).

A fine of up to EUR 1,450 may be imposed by the Regional Administrative Authority for infringements of certain price labelling provisions as set out in § 15 PrAG (Directive 98/6).

A fine of up to EUR 1,450 may be imposed by the competent authority for infringements as set out in § 18 (1) TNG (Directive 2008/122), however, if consumer payments are demanded or accepted by the entrepreneur before the end of the withdrawal period, a fine of up to EUR 7,260 may be imposed.

A fine of up to EUR 1,450 may be imposed by the competent authority for infringements of certain obligations as set out in § 19 PRG (Directive 2015/2302).

The stated Austrian laws do not provide for a minimum fine but rather state the maximum amount which may be imposed for an infringement. However, the Austrian Administrative Criminal Act states in § 13 that the minimum administrative fine is EUR 7.

The Austrian law does not provide for differences in the monetary amount of administrative fines depending on whether a natural person or legal person acted.

The abovementioned Austrian laws do not decide on the purposes to which the profits of the monetary fines are dedicated.

What are the contractual consequences of an administrative order or a judgment on an individual transaction under the Directives?

In general, administrative orders do not have an effect on a contract. A judgement only produces effects between the procedural parties.

A consumer may file a court action to rescind a void contract on the grounds of mistaken consent at the time of conclusion of the contract due to an unfair commercial practice of the entrepreneur (Directives 2005/29 and 2006/114) or due to a violation of consumer rights (Directive 2011/83) or due to infringements of provisions as stated in Directives 1999/44 and 93/13.

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