

## I. ADMINISTRATIVE ENFORCEMENT

Which administrative mechanisms are available to enforce the Directives?

Directive 1999/44/EC (Consumer Sales and Guarantees) was implemented by the European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003 ("2003 Regulations").

Directive 2011/83/EU (Consumer Rights) was implemented by the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 ("2013 Regulations").

Directive 2005/29/EC (The Unfair Commercial Practices Directive) was implemented by the Consumer Protection Act 2007 ("2007 Act").

Directive 93/13/EEC (Unfair Terms in Consumer Contracts) was implemented by the European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995 and 2000 ("1995 and 2000 Regulations").

Directive 98/6/EC (Price Indication) was implemented by the European Communities (Requirements to Indicate Product Prices) Regulations 2002 (the "2002 Regulations").

Directive 2006/114/EC (Misleading and Comparative Advertising) was implemented by the European Communities (Misleading and Comparative Marketing Communications) Regulations 2007 (the "2007 Regulations").

Directive 2008/122/EC was implemented by S.I. No. 73/2011 European Union (Protection of Consumers in respect of Timeshare, Long-term Holiday Product, Resale and Exchange Contracts) Regulations 2011 (the "2011 Regulations").

Directive 90/314/EEC (Package Travel, Package Holidays and Package Tours) is implemented by the Package Holidays and Travel Trade Act, 1995 (the "1995 Act").

The Competition and Consumer Protection Commission ("CCPC") deals with consumer complaints and policy at a national level. It was established on 31 October 2014 following the amalgamation of the National Consumer Agency and the Competition Authority. It is responsible for enforcing a wide range of legislation aimed at protecting consumers.

The CCPC has a range of powers to help achieve compliance with consumer protection law. These are:

- Prosecution
- Prohibition orders
- Compliance Notices
- Undertakings
- Fixed Payment Notices
- Consumer Protection List

Relevant information such as Compliance Notices (issued against an entity who is deemed to have committed a 'prohibited practice'), as well as the Consumer Protection List (which records a list of enforcement actions taken by the CCPC) and Annual Reports can be obtained from

	<p>the general website at <a href="http://ccpc.ie/">http://ccpc.ie/</a></p> <p>The European Consumer Centre (“ECC”) Ireland deals with consumer complaints in a cross border context. It cooperates with other EU networks and national consumer organisations and enforcement agencies e.g. the Competition and Consumer Protection Commission, the Financial Services Ombudsman, and the Consumers’ Association of Ireland.</p>
<p><b>Who can file administrative complaints? Can investigations be initiated ex officio?</b></p>	<p>The CCPC allows administrative complaints to be filed by any person. This means a natural person (whether in the State or not) who is acting for purposes unrelated to the person's trade, business or profession.</p> <p>The CCPC can carry out an investigation, either on its own initiative or in response to a complaint made to it by any person, into any suspected breach of the relevant statutory provisions that may be occurring or has occurred.</p> <p>There is currently no procedure in Ireland for the taking of class actions seeking damages. There have been calls for reform to facilitate the taking of collective/related actions in Ireland, including in a report by the Law Reform Commission published in 2005. Recent developments in the UK and at EU level, including the EU Recommendations on Collective Redress of 2013 and Directive 2014/104/EU on Antitrust Damages Actions, may lead to reform in this area.</p>
<p><b>Do any specific procedural requirements apply to filing administrative complaints?</b></p>	<p>Where the consumer has already given the business that has allegedly breached their consumer rights an opportunity to remedy the situation without success, they can then report the business to the CCPC by completing the <a href="#">contact form</a> on the website and supplying the relevant details. When a consumer emails through the website contact page, they will receive an email acknowledgement and a copy of the email.</p> <p>A consumer may also complain by letter or fax, which will be acknowledged within five working days. A full response should be provided within 15 days.</p> <p>There is a <a href="#">guidance note</a> on how to complain that is readily available on the CCPC website.</p> <p>If a complaint involves an amount up to €2,000, the CCPC suggests bringing the matter to court through the Small Claims process.</p>
<p><b>Do the administrative authorities have an obligation to investigate the complaint?</b></p>	<p>The Competition and Consumer Protection Act 2014 (the “CCPC 2014”) provides that it is a function of the CCPC to carry out an investigation in response to a complaint made to it by any person.</p> <p>Details of investigations and the number of fines, penalties and compensation orders issued can be found in the <a href="#">CCPC Annual Reports</a>.</p>
<p><b>Are there any specific requirements regarding the provision of evidence to the competent authorities?</b></p>	<p>The CCPC may summon and examine witnesses on oath and require any such witness to produce to the Commission any books, documents and records in his or her power or control. It can also require any person or undertaking to provide it with written information necessary to enable it to carry out its functions.</p>
<p><b>II. ENFORCEMENT THROUGH COURT ACTION</b></p>	

<b>Which court actions are available to enforce the Directives?</b>	<p>Consumers can take court action by bringing a claim for €2,000 or less through the Small Claims procedure. A claim can be brought by a consumer making a claim for goods and services bought for private use, or a business making a claim for goods or services bought for business use.</p> <p>Any person (including a trader) can apply to the Circuit Court or High Court for an order prohibiting a trader or person from committing or engaging in a prohibited act or practice. A consumer who is aggrieved by a prohibited act or practice has a right of action for relief by way of damages, including exemplary damages, against the trader or body corporate, director, manager, secretary or other officer of the trader, or a person who purported to act in any such capacity, who authorised or consented to the doing of the act or the engaging in of the practice.</p>
<b>Who can start a court action?</b>	<ul style="list-style-type: none"> <li>• An action can be initiated by the consumer in the Small Claims Court.</li> <li>• A trader or other person can apply to the Circuit Court or the High Court under the 2007 Regulations.</li> <li>• Any person, including the CCPC can apply for civil relief by way of prohibition orders.</li> </ul>
<b>Can court actions be initiated by competitors?</b>	<p>“A trader or other person” can make an application under the 2007 Regulations, and “any person” can make an application under the Consumer Protection Act 2007 (“CPA 2007”). This would include a competitor who has suffered damage and therefore has legal standing.</p> <p>However if the applicant other than the CCPC seeks civil relief by way of prohibition order, the court may not make the order unless the CCPC has been afforded an opportunity to be heard and adduce evidence.</p>
<b>Can the case be handled through an accelerated procedure?</b>	<p>Member States can make provision for an accelerated procedure in Directive 2006/114/EC and 2005/29/EC, but this option was not availed of in the implementation of the Directives into Irish law. There is no accelerated procedure in the 2007 Regulations or in the 2007 Act.</p> <p>There is no provision for accelerated procedure under the Directives 2008/122/EC, 90/314/EEC, 98/6/EC, 93/13/EEC, 2011/83/EU and 1999/44/EC.</p>
<b>Are there any specific requirements regarding the provision of evidence to the court?</b>	<p>Implementing national laws do not contain any provision on this matter.</p> <p>If the applicant for an order under the 2007 Act is not the CCPC, the court may not make the order unless the CCPC has been afforded an opportunity to be heard and adduce evidence.</p>
<b>Are there specific procedural reliefs for consumers or consumer associations?</b>	<p>Neither the directives nor the implementing national laws contain any provision on this matter.</p>
<b>III. SANCTIONS</b>	
<b>What are the possible civil sanctions and remedies for the infringement of the provisions of the Directives?</b>	<p>Under the 1995 Act, an organiser can be held liable to the consumer for any damage caused by the failure to perform the contract or the improper performance of the contract unless the failure is not due to the fault of the organiser, retailer or supplier of services.</p> <p>The Court may make an order finding a misleading commercial practice</p>

under any of sections 43 to 46 of the Consumer Protection Act 2007 (No. 19 of 2007), without proof of any actual loss or damage on the part of the person making the application, or any intention or negligence on the part of the trader against whom the order is sought.

In making an order under the implementing legislation, the Court may impose terms or conditions in the order that the Court considers appropriate, including a requirement that the trader publish a corrective statement, at the trader's own expense and in any manner the Court considers appropriate, in respect of matters the subject of the order.

The nature of the sanctions provided for different infringements of the Directives' provisions:

- 2003 Regulations: no sanctions / penalties / fines are provided for.
- 2013 Regulations: Both civil (and criminal) sanctions are provided for.
- 2007 Act: Both civil (and criminal) sanctions are provided for. Criminal sanctions are provided for both misleading commercial practises, aggressive commercial practices and prohibited commercial practises.
- 1995 Regulations: Civil sanctions. No criminal sanctions.
- 2002 Regulations: Civil sanctions.
- 2007 Regulations: no sanctions / penalties / fines are provided for.
- 2011 Regulations: Both civil (and criminal) sanctions are provided for.
- 1995 Act: Both civil (and criminal) sanctions are provided for.

Bodies with the authority to impose the above penalties:

- 2003 Regulations: no sanctions / penalties / fines are provided for.
- 2013 Regulations: This is not specified but practically, a Court imposes the penalties.
- 2007 Act: a Court imposes the penalties.
- The CCPC has a range of powers to help achieve compliance with consumer protection law. These are: Prosecution, Prohibition orders, Compliance notices, Undertakings and Fixed payment notices.
- 2000 Regulations: This is not specified but practically, a Court imposes the penalties.
- 2002 Regulations: The Circuit Court.
- 2007 Regulations: Circuit Court or the High Court.
- 2011 Regulations: This is not specified but practically, a Court imposes the penalties.
- 1995 Act: District or High Court.

The legislation does not specify whether there is to be a link between the level of monetary fines and the trader's turnover.

The legislation does not specify whether there are differences between the amounts of the monetary fines depending on whether the trader who acted in breach of the Directives' provisions is a natural or a legal person, as far as we are aware.

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

2013 Regulations and 2007 Act

Section 38(1) states that a person found guilty of an offence under these Regulations shall be liable to (a) on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months or to both, or (b) on conviction on indictment to a fine not exceeding €60,000 or to imprisonment for a term not exceeding 18 months or to both.

Sections 76 to 78 and sections 80, 83 and 84 of the 2007 Act shall apply to an offence under the 2013 Regulations as they apply to an offence under that Act and, accordingly, references in those sections to an offence under that Act shall be construed as including references to an offence under these Regulations.

The 1995 and 2000 Regulations

Regulation 6 states that a person guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding £1,500.

Regulation 7 states that an offence under these Regulations may be prosecuted by the CCPC.

2002 Regulations

Regulation 12(1) states that an offence under these Regulations may be prosecuted by the CCPC.

Regulation 12(2) states that a person guilty of an offence under these Regulations is liable on summary conviction to a fine not exceeding €3,000.

The 1995 Act

Section 6 of the 1995 Act as amended states that a person who commits an offence under the Act will be liable on summary conviction to a fine not exceeding €3,000.

A person who is guilty of an offence under section 21, 22 (3) or 26 shall be liable on summary conviction to a fine not exceeding €3,000 or, on conviction on indictment, to a fine not exceeding €100,000 or imprisonment for a term not exceeding 12 months or both. A director, manager, secretary or any other officer of a body corporate, as well as a body corporate, may be guilty of an offence.

The 2011 Regulations

Under the 2011 Regulations, a person found guilty of an offence under these Regulations shall be liable -

(a) on summary conviction to a Class A fine or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment to a fine not exceeding €60,000 or to

imprisonment for a term not exceeding 18 months or to both.

Sections 77 and 80 of the CPA 2007 apply to an offence under the 2011 Regulations. Section 77 states that a director, manager, secretary or any other officer of a body corporate, as well as a body corporate, may be guilty of an offence. Section 80 provides that convicted persons will be liable for the costs and expenses of proceedings and investigation.

Criteria that may be taken into account by the court while deciding whether to impose a monetary sanction or the amount of such a fine in each individual case:

- 2007 Act: Section 5 (8) provides that in considering an appropriate penalty under this section for a trader convicted of an offence under section 47, 51 (2) or 56, the court may take into consideration any advertisement published by or on behalf of the trader containing corrective statements to remedy the prohibited act or practice in respect of which the trader is convicted.
- This is not specified in other relevant legislation.
- Additionally, the legislation does not specify whether there is to be a link between the level of monetary fines and the trader's turnover.

Amounts of monetary fines depending on whether the trader who acted in breach of the Directives' provisions is natural or legal person:

- 2003 Regulations: no sanctions / penalties / fines are provided for.
- 2013 Regulations: This is not specified
- 2007 Act: legal persons and natural persons can be persecuted but no differences in levels of fines are specified.
- 1995 and 2000 Regulations: This is not specified
- 2002 Regulations: legal persons and natural persons can be persecuted but no differences in levels of fines are specified.
- 2007 Regulations: no sanctions / penalties / fines are provided for.
- 2011 Regulations: This is not specified
- 1995 Act: legal persons and natural persons can be persecuted but no differences in levels of fines are specified.

Maximum amounts of fines to be imposed under relevant legislation:

- 2003 Regulations: no sanctions / penalties / fines are provided for.
- 2013 Regulations: Maximum fine is €60,000 on indictment, and a Class A fine on summary conviction.
- 2007 Act: Traders who mislead consumers could face on the spot fines of up to €60,000 or 18 months in jail. Those involved in pyramid selling schemes face penalties of up to €150,000 and five years' imprisonment. However, most offences are likely to be dealt with summarily, with penalties of up to €3,000 and/or six months in jail for a first offence. Courts will

be given the power to order offenders to pay compensation and to publish corrective statements.

- 1995 Unfair Terms Regulations: Fine of up to £1,500 on summary conviction.
- 2000 Regulations: This is not specified
- 2002 Regulations: Fine not exceeding €3,000 on summary conviction.
- 2007 Regulations: no sanctions / penalties / fines are provided for.
- 2011 Regulations: Fines of up to €60,000 on indictment, class A fine on summary conviction.
- 1995 Act - Fine not exceeding £1,500 on summary conviction, or a fine not exceeding £50,000 on indictment.

Different fines imposed depending on the particular infringement of the various Directives (Unfair Commercial Practices Directive, Unfair Contract Terms Directive, Consumer Rights Directive, Consumer Sales and Guarantees Directive):

- 2003 Regulations: no sanctions / penalties / fines are provided for.
- 2013 Regulations: See section 38 (1). A person found guilty of an offence shall be liable on summary conviction to a class A fine, or on conviction on indictment to a fine not exceeding €60,000.
- 2007 Act: See section 79.
  - 1. On summary conviction: A person guilty of an offence under the Act (other than under section 65 (2)) is liable (a) on a first summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both; (b) on any subsequent summary conviction for the same offence or any other offence under this Act (other than an offence under section 65 (2)), to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both. If, after being convicted of an offence, the person continues to contravene the requirement or prohibition to which the offence relates, the person is guilty of a further offence on each day that the contravention continues and for each such offence is liable on summary conviction to a fine not exceeding €500.
  - 2. On Indictment: A person guilty of an offence under the Act (other than under any of the excluded sections) is liable (a) on a first conviction on indictment for any such offence, to a fine not exceeding €60,000 or imprisonment for a term not exceeding 18 months or both; (b) on any subsequent conviction on indictment for the same offence or any other offence under this Act (other than an offence under any of the excluded sections), to a fine not exceeding €100,000 or

imprisonment for a term not exceeding 24 months or both.

- 3. A person guilty of an offence under section 65 (2) is liable on conviction on indictment to a fine not exceeding €150,000 or imprisonment for a term not exceeding 5 years or both. f, after being convicted of an offence under section 65 (2), a person continues to contravene section 65 (1), the person is guilty of a further offence on each day that the contravention continues and for each such offence is liable on conviction on indictment to a fine not exceeding €10,000.
- 1995 and 2000 Regulations: See section 6. A person guilty of an offence shall be liable on summary conviction to a fine not exceeding £1,500.
- 2002 Regulations: Section 12 (2) A person guilty of an offence is liable on summary conviction to a fine not exceeding €3,000.
- 2007 Regulations: no sanctions / penalties / fines are provided for.
- 2011 Regulations: See section 21. A person found guilty of an offence under these Regulations shall be liable- (a) on summary conviction to a Class A fine or to imprisonment for a term not exceeding 12 months or to both, or (b) on conviction on indictment to a fine not exceeding €60,000 or to imprisonment for a term not exceeding 18 months or to both.
- 1995 Act: See Section 6 (1) to 6 (3). A person who contravenes any provision of the Act is liable on summary conviction to a fine not exceeding £1,500. A person who is guilty of an offence under section 21 , 22 (3) or 26 shall be liable on summary conviction to a fine not exceeding £1,500 or, on conviction on indictment, to a fine not exceeding £50,000 or imprisonment for a term not exceeding two years or to both.

Bodies with the authority to impose the above-mentioned penalties:

- 2003 Regulations: no sanctions / penalties / fines are provided for.
- 2013 Regulations: This is not specified but practically, a Court imposes the penalties.
- 2007 Act: a Court imposes the penalties.
- The CCPC has a range of powers to help achieve compliance with consumer protection law. These are: Prosecution, Prohibition orders, Compliance notices, Undertakings and Fixed payment notices.
- 2000 Regulations: This is not specified but practically, a Court imposes the penalties.
- 2002 Regulations: The Circuit Court.
- 2007 Regulations: Circuit Court or the High Court.
- 2011 Regulations: This is not specified but practically, a Court imposes the penalties.
- 1995 Act: District or High Court.

<p><b>What are the possible administrative sanctions for the infringement of the Directives' provisions?</b></p>	<p>The CCPC has many enforcement tools as mentioned above, such as the authority to issue a compliance notice.</p> <p>The legislation does not specify whether there is to be a link between the level of monetary fines and the trader's turnover.</p> <p>The legislation does not specify whether there are differences between the amounts of the monetary fines depending on whether the trader who acted in breach of the Directives' provisions is a natural or a legal person, as far as we are aware.</p>
<p><b>What are the contractual consequences of an administrative order or a judgment on an individual transaction under the Directives?</b></p>	<p>An order can be obtained prohibiting a trader from engaging in misleading marketing communication. Traders who commit an offence under the 2011 Regulations or the 1995 Act may be liable to a fine and/or imprisonment.</p> <p>The individual transaction, however, will not be affected by the above. Remedies are available to the consumer under national law in the event of breach of the provisions of the contract.</p>
<p><b>Can authorities order the trader to compensate consumers who have suffered harm as a result of the infringement?</b></p>	<p>The CCPC oversee consumer enforcement actions resulting in fines penalties and compensation orders imposed by the Courts.</p> <p>The tour operator must compensate a consumer for any shortfalls in the service that it provides - between what was originally due and what was actually provided.</p> <p>In the case of damage arising from the non-performance or improper performance of the services involved in the package, the contract may provide for compensation to be limited in accordance with any international conventions in force governing such services in the place where they are performed or are due to be performed.</p> <p>Also, as far as we are aware, national legislation in place does not make provision for decisions to be made by the body imposing the penalty as to the purpose to which the profits of the monetary fine are to be dedicated, such as for consumer protection purposes or others.</p>
<p><b>Can the administrative authorities or the courts require the publication of their decisions?</b></p>	<p>The CCPC publish details of enforcement actions in their annual reports.</p>
<p><b>IV. OTHER TYPES OF ENFORCEMENT</b></p>	
<p><b>Are there any self-regulatory enforcement systems in your jurisdiction that deal with aspects of the Directives?</b></p>	<p>The Advertising Standards Authority for Ireland ("ASAI") is an independent self-regulatory body set up and financed by the advertising industry. Self-regulation means the adoption by the advertising industry of standards drawn up by and on behalf of all advertising interests. It involves the enforcement of those standards through the commitment and cooperation of advertisers, agencies and media.</p> <p>The rules are set out in the ASAI's "Code of Standards for Advertising and Marketing Communications in Ireland" ("ASAI Code"). The aim of the ASAI Code is to regulate commercial marketing communications in the interest of consumers ensuring, so far as possible, that all marketing communications are prepared with a sense of responsibility both to the consumer and to society. Members of ASAI are required to abide by the ASAI Code and not to publish an advertisement or conduct a promotion which contravenes ASAI Code rules. Case Reports on complaints investigated by ASAI are released in periodic Complaints Bulletins</p>

	during the year.
<b>Are there any out-of-court dispute settlement bodies available that deal with aspects of the Directives (e.g. mediation, conciliation or arbitration schemes ombudsmen)?</b>	<p>The EU Directive 2013/11/EU on alternative dispute resolution for consumer disputes was transposed into Irish law by the European Union (Alternative Dispute Resolution for Consumer Disputes) Regulations 2015 (SI 343/2015). Under the Regulations the CCPC has been appointed as the competent authority to oversee and regulate the functioning of alternative dispute resolution entities established in Ireland.</p> <p>Some consumer contracts will bind a consumer to pursue their case through arbitration. Arbitration bodies have the power to make legally binding decisions. The decision places a legal requirement on the retailer to repay the money, for example. If the outcome of the alternative dispute resolution is legally binding on either party, the matter may not be pursued in court.</p> <p>Arbitration may be arranged by the <a href="#">Chartered Institute Of Arbitrators - Irish Branch</a> on behalf of tour operators / organisers.</p>