

**I. ADMINISTRATIVE ENFORCEMENT****Which administrative mechanisms are available to enforce the Directives?**

- In the Czech Republic, Directive 90/314/EEC ("Package Travel Directive") is implemented by the Act no. 89/2012 Coll., Civil Code, as amended ("Civil Code") and Act No. 159/1999 Coll., on certain conditions of business activities in the area of tourism, as amended, Directive 93/13/EEC (Unfair terms) is implemented by the Act no. 89/2012 Coll., Civil Code, as amended, Directive 98/6/EC (Price indication) is implemented by the Act no. 526/1990 Coll., on prices, as amended, Directive 1999/44/EC (Consumer sales and guarantees) is implemented by the Act no. 89/2012 Coll., Civil Code, as amended, Directive 2005/29/EC (Unfair Commercial Practices) is implemented by the Act no. 36/2008 Coll., amending the Act no. 634/1992 Coll., on Protection of Consumers, as amended ("Act on Protection of Consumers"), Act no. 40/1995 Coll., on Regulation of Advertising, as amended, Act no. 468/1991 Coll., on Operation of a Television and Radio Broadcasting, as amended, Directive 2006/114/EC (Misleading and comparative advertising) is implemented by the Act no. 40/1995 Coll., on Regulation of Advertising, as amended and Act no. 89/2012 Coll., Civil Code, as amended, Directive 2008/122/EC (Timeshare) is implemented by the Act no. 89/2012 Coll., Civil Code, as amended, Directive 2009/22/EC (Injunctions for the protection of consumers' interests) is implemented by the Act on Protection of Consumers and act no. 99/1963 Coll., Civil Procedure, as amended, Directive 2011/83/EU (Consumer rights) is implemented by the Act no 89/2012 Coll., Civil Code, as amended.

- The general enforcement is handled by the Czech Trade Inspection Authority ("CTIA"). The general website of CTIA can be found at <http://www.coi.cz/en/>.

In certain cases (e.g. the enforcement is handled by other Czech authorities such as:

- State Agricultural and Food Inspection Authority ("CAFIA"). which can be found at <http://www.szpi.gov.cz/en/>,
- State Institute for Drug Control which can be found at <http://www.sukl.eu/index.php?lang=2>
- The Council for Radio and Television Broadcasting which can be found at <http://www.rrtv.cz/en/>
- Energy Regulatory Office which can be found at <http://www.eru.cz/en/>

<p><b>Who can file administrative complaints? Can investigations be initiated ex officio?</b></p>	<ul style="list-style-type: none"> <li>Administrative complaints can be filed by any natural or legal person. There is no need to prove a legitimate interest. In addition, administrative complaints can also be filed by associations of consumers or other similar legal entities established for the protection of consumer interests.</li> <li>Investigations can be initiated ex officio in accordance with the section 42 of the Act. No. 500/2004 Coll., Administrative Procedure Code ("Administrative Procedure Code"). Administrative motion/complaint regarding ex officio initiation, can be filed by any natural or legal person, materially competent administrative authority or any other body of public authority. But nobody has a right to demand administrative authority to initiate proceeding ex officio. (The administrative authority considers if the conditions for an administrative proceeding initiation are fulfilled. And if it is that so, the administrative authority initiates the proceeding regardless of how it learned about the issue.</li> </ul>
<p><b>Do any specific procedural requirements apply to filing administrative complaints?</b></p>	<ul style="list-style-type: none"> <li>Administrative complaints may be filed electronically at <a href="http://www.coi.cz/en/for-consumer/advice-information-consumer-rights/complaints-submissions-information-requests/">http://www.coi.cz/en/for-consumer/advice-information-consumer-rights/complaints-submissions-information-requests/</a>, in writing at the relevant regional office of CTIA or personally at a relevant regional office of CTIA during its office hours (there is usually a department of advisory services, which also accepts motions/complaints).</li> <li>Suggestions for inspection/complaints can be filed electronically at <a href="http://www.szpi.gov.cz/en/suggestions-for-inspection.aspx">http://www.szpi.gov.cz/en/suggestions-for-inspection.aspx</a>. It is possible to contact CAFIA's helpline during the office hours. No other specific requirements are requested.</li> </ul>
<p><b>Do the administrative authorities have an obligation to investigate the complaint?</b></p>	<ul style="list-style-type: none"> <li>In accordance with section 42 of the Administrative Procedure Code, the administrative authority (e.g. CTIA, CAFIA etc.) is obliged to receive motions to initiate proceedings ex officio. If requested by the person who filed a motion, the administrative authority is obliged to inform them within 30 days from the day when it received the motion that it has initiated proceedings or that it did not find any reason to initiate proceedings ex officio or that it referred the motion to the competent administrative authority</li> <li>The CTIA has a duty to initiate investigation on the basis of any natural or legal person motion/complaint. But the investigation can be also initiated within the framework of the CTIA's control activities.</li> <li>The same as for CTIA goes for CAFIA.</li> </ul>

<p><b>Are there any specific requirements regarding the provision of evidence to the competent authorities?</b></p>	<ul style="list-style-type: none"> <li>• In general, every complainant is obligated to provide evidence supporting his statements (otherwise he risks the motion/complaint being dismissed).</li> <li>• In accordance with paragraph (1) section 51 of the Administrative Procedure Code, any evidence appropriate for ascertaining the state of the matter and neither acquired nor taken contrary to legal regulations may be used. Such evidence in particular includes documents, examination, testimony and expert opinion.</li> <li>• Grounds for the issuance of a decision of CTIA are, in particular: petitions of the participants; evidence; facts known to the administrative authority from its official activity; sources from other administrative authorities or other public bodies.</li> <li>• The administrative authority (e.g. CTIA, CAFIA) weighs the relevance of the sources, particularly evidence, under its consideration except where the statute provides that a source is binding for the administrative authority.</li> </ul>
<p><b>II. ENFORCEMENT THROUGH COURT ACTION</b></p>	
<p><b>Which court actions are available to enforce the Directives?</b></p>	<ul style="list-style-type: none"> <li>• A cease-and-desist action or a general claim for civil damages under sections 2909, 2910 or 2913 of the Civil Code can be filed before the competent district court.</li> <li>• Interim measures under paragraph (1) section 74 of the Act No. 99/1963 Coll., Civil Procedure Code ("Civil Procedure Code"), an interim measure may be ordered by the presiding judge before proceedings are initiated, if necessary, to provisionally modify the relation of participants, or if feared the enforcement of the judicial decision could be jeopardized.</li> <li>• In Czech Republic there is no institute such a class action. Czech law recognize only Joining matters. Under paragraph (1) section 112 of the Civil Procedure Code, For the sake of the economic efficiency of the proceedings, the court shall be authorized to join in common proceedings individual matters that have been initiated at that court, and facts at issue of which are connected with each other or involve the same participants.</li> </ul>
<p><b>Who can start a court action?</b></p>	<p>The court action can be initiated by a natural person or legal entity with direct and legitimate interest in the case, including qualified associations, such as consumer associations. According to section 25 of the Act on the Protection of Consumers, a motion to begin court proceedings for injunctions in matters concerning the protection of consumer rights may be filed by such persons or entities, who may then participate in the proceedings.</p>
<p><b>Can court actions be initiated by competitors?</b></p>	<ul style="list-style-type: none"> <li>• Yes, court actions can be initiated by competitors. Under section 2998 of the Civil Code, a person whose right has been jeopardized or violated (e.g. competitor) by unfair competition may request the violator to refrain from competing unfairly or to remove a defective state. He may also request adequate satisfaction, compensation for damage and restitution of unjust enrichment.</li> </ul>

<p><b>Can the case be handled through an accelerated procedure?</b></p>	<ul style="list-style-type: none"> <li>• The Civil Procedure enables the issuance of a payment order instead of a regular judgment (Sections 172 and subsequent of the Civil Procedure Code). The court shall be authorized, without the express request of the plaintiff and without hearing the defendant, to issue a payment order if: <ul style="list-style-type: none"> <li>(i) the action filed is for money;</li> <li>(ii) the plaintiff states all the information needed for the court decision about the plaintiff's right;</li> <li>(iii) the Defendant's address is known ; and</li> <li>(iv) and if the payment order is not be delivered to the Defendant abroad. If any of these are not met, the court will order a hearing and the proceedings continues in a standard way.</li> </ul> <p>The payment order must be personally delivered into the hands of the Defendant (i.e. the presumed delivery shall not apply for the payment order). The Defendant may file a protest within 15 days. Such appeal means the cancellation of the payment order, whereby the court shall order a hearing and the proceedings continue in the standard way. If the protest is not filed in 15 days, the payment order comes into legal force.</p> </li> <li>• The plaintiff may also submit an action for an electronic payment order (Section 174a of the Civil Procedure Code). The court may issue an electronic payment order if the following conditions, along with the previously mentioned conditions are met: <ul style="list-style-type: none"> <li>(i) if the application is filed in an appropriate electronic form (available on-line);</li> <li>(ii) if it is signed by a recognized electronic signature of the plaintiff; and</li> <li>(iii) if the claim does not exceed the amount of CZK 1,000,000 (approx. EUR 40,000).</li> </ul> <p>A protest against an electronic payment order may also be filed on an electronic form signed by a guaranteed electronic signature. Such form shall be published by the Ministry in a manner allowing remote access.</p> </li> <li>• The Civil Procedure Code also provides a possibility to file a European payment order (Section 174b of the Civil Procedure Code). The European payment order must be delivered into the hands of the Defendant (personally); replacement delivery is excluded. A court competent for the proceedings for the petition for reviewing a European payment order shall include the court that issued the European payment order. The court resolution by which a petition for reviewing a European payment order has been satisfied shall be delivered to participants in the proceedings for a European payment order.</li> </ul>
<p><b>Are there any specific requirements regarding the provision of evidence to the court?</b></p>	<ul style="list-style-type: none"> <li>• According to section 120 of the Civil Procedure Code, parties to the proceedings are obliged to provide evidence for all of their statements. The court shall decide which of the proposed evidence to adduce. The Civil Code or any other act does not contain provision on this matter.</li> </ul>

**Are there specific procedural reliefs for consumers or consumer associations?**

As far as the consumers in civil proceedings are concerned, in the following situations a reversal of the burden of proof comes about:

- In compensation for material damage a consumer has to prove damage the suffered damage but it is not up to him to prove *conditio sine qua non* between the caused damage and lawless behavior
- Under paragraph (2) section 2989 of the Civil Code, if a consumer asserts his right to have a violator refrain from competing unfairly or remove a defective state, and if it is a case provided under sections 2976 to 2981 or section 2987, the violator must prove that he did not compete unfairly. If a consumer asserts his right to compensation for damage, the violator must prove that the damage was not caused by unfair competition.
- Under paragraph (2) section 2894 of the Civil Code, if the duty to provide compensation to another for non-pecuniary harm has not been expressly stipulated, it affects the tortfeasor only where specifically provided by a statute. In such cases, the duty to provide compensation for non-pecuniary harm by providing satisfaction is assessed by analogy under the provisions on the duty to provide compensation for damage.

**III. SANCTIONS**

**What are the possible civil sanctions and remedies for the infringement of the provisions of the Directives?**

- The possible outcomes from the civil proceedings are mainly the obligation to refrain from unlawful conduct and damages.
- The competent civil court can award damages in the framework of a claim for civil damages based on sections 2909, 2910 or 2913 of the Civil Code.
- Under the section 2988 of the Civil Code, a person whose right has been jeopardized or violated by unfair competition may request the violator to refrain from competing unfairly or to remove a defective state. He may also request adequate satisfaction, compensation for damage and restitution of unjust enrichment. The competent civil court will decide.
- Under paragraph (1) a) and paragraph (14) d) section 24 of the Act on Protection of Consumers a person (natural or legal) who breaks the rules of unfair business practices can be fined by administrative sanctions up to 5 000 000 CZK (approx. EUR 200 000). The administrative court will decide about the fine.
- Under paragraph (4) section 155 of the Civil Procedure Code, in matters regarding the protection of rights violated or put at risk by unfair competitive behavior, the protection of intellectual property rights and in matters regarding the protection of rights of consumers, the court shall be authorized in the verdict to grant the participant, the action of whom it has upheld, upon the petition by that participant, the right to publish the judgment at the expense of the unsuccessful participant; depending on the case circumstances, the court shall also determine the extent, form, and manner of publishing.
- There is no max. or min. amount of fines. (Repeated breaking of law can lead to higher fines)
- The purposes to which the profits of monetary fines are dedicated are not provided under the national law.
- There are no specific sanctions for infringement of a certain directives, no differences.
- There is no link between the level of monetary fines and the trader's turnover.

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

- In accordance with Act no. 40/2009 Coll., Criminal Code as amended and of the Act no. 418/2011 Coll., on Corporate Criminal Liability ("Corporate Criminal Liability Act" - *sanctions for legal persons*) the following sanctions may be imposed for the infringement:

- I. Imprisonment:

Under section 52 of the Criminal Code,

(2) Unless defined otherwise under criminal law, punishment by a prison sentence denotes, a) an unconditional prison sentence, b) a conditional conviction to the punishment by prison sentence, c) a conditional conviction to the punishment by prison sentence with supervision.

Under section 54 of the Criminal Code,

(1) A punishment of an unconditional prison sentence shall be imposed for a maximum of twenty years unless it involves an extraordinary increase of a prison sentence (Section 59), imposition of a prison sentence upon an offender of a criminal offence committed in favor of an organized criminal group (Section 108) or an exceptional punishment (Section 54) is concerned.

- II. Monetary penalty

Under section 67 of the Criminal Code,

(1) The criminal court may impose a monetary penalty where the offender sought to secure or secured for themselves or for another person any material benefit by committing an intentional criminal offence.

(2) Where the conditions under Subsection 1 have not been met, the court may only impose a monetary penalty if

a) criminal law allows the imposition of such punishment for the criminal offence committed, or

b) it is imposed for an offence and given the nature and severity of the offence committed and the character of the offender and their circumstance, they do not impose the unconditional prison sentence simultaneously.

(3) A monetary penalty may be imposed as a separate punishment where, in consideration of the nature and seriousness of the criminal offence committed and the character of the offender and their situation, no other punishment need be imposed.

for legal persons:

Under section 18 of the Corporate Criminal liability Act

(1) The criminal court may impose a fine to a legal entity, if it condemns for an intentional crime or offense committed through negligence. Imposition of fines shall not prejudice the rights of the injured.

(2) Daily rate is at least CZK 1,000 and a maximum of 2 000 000 CZK. When determining the amount of the daily rate the court shall take into account financial status of a legal person.

(3) Provision of paragraph 17 sec. 4 shall be used similarly.

There is no max. or min. amount of fines. (Repeated breaking of law can lead to higher fines)

- III. Forfeiture of item

Under section 70 of the Criminal Code,

(1) The criminal court shall impose forfeiture of the item obtained by the offender through a criminal offence or as a reward for the criminal offence.

(2) The court may impose forfeiture of an item

a) that was used for committing a criminal offence or that was intended for committing a criminal offence, or

b) that was, even if only partially, acquired by the offender for the item stated in Subsection 1 if the value of the item stated in Subsection 1 is not negligible in relation to the value of the acquired item.

(3) The court may only impose forfeiture of a possessed item where the possession concerned belongs to the offender.

(4) If, contrary to another legal regulation, the offender has an item referred to in Subsection 2 in their possession with regard to which the forfeiture of the item may be imposed, the court shall always impose this punishment as well.

(5) Before the decision enters into full force and effect, the prohibition on misappropriating a confiscated possession or other asset applies; this includes the prohibition on any activities that would lead to the defeating the punishment involving the forfeiture of an item of possession or other asset.

(6) The confiscated possessed item falls to the State.

For legal persons:

Under section 19 of the Corporate Criminal liability Act

The court may impose a forfeiture to a legal person, including forfeiture of substitute values, under the conditions stipulated by the Criminal Code.

- IV. Punishment by disqualification

Under section 73 of the Criminal Code,

(1) The criminal court may impose a punishment consisting of disqualification of one to ten years if the offender has committed a criminal offence in association with such activity.

(2) The criminal court may only impose a punishment by disqualification as a separate punishment where the criminal law permits the administration of such punishment for the criminal offence committed and if, with regard to the nature and seriousness of the criminal offence committed and the character of the offender and their personal circumstance, no other punishment need be imposed.

(3) The punishment by disqualification consists of the convict being prevented for the duration of the punishment from pursuing certain employment, occupation or function or such an activity which is conditioned by a special licence, or whose pursuit is regulated by another legal regulation.

For legal persons:

Under section 20 of the Corporate Criminal liability Act

(1) The court may impose disqualification to a legal person from one to twenty years, if the crime was committed in connection with this activity.

(2) Provision of paragraph 17 sec. 4 shall be used similarly.

- V. Punishment by publishing a sentence

Under section 23 of the Corporate Criminal Liability Act -

(1) The criminal court may impose a penalty of publication of the judgment, if it is necessary to acquaint the public with the judgment of conviction, especially according to the nature and seriousness of the crime, or if it is required by the interest in protecting the safety of people or property, or society. In this case the court determines the kind of public means of communication, in which judgment is to be published, the extent of its publication and the period within which the legal entity shall publish the judgment.

(2) The penalty of publication of the judgment lies in the fact that the convicted legal entity is allowed at his own expense a final conviction, or its part to publish in the court determined kind of means of communication, with data indicating the name of a company or legal person and its seat. Data allowing identification of the natural person or legal entity that is different from convicted legal entity mentioned in the operative part of the judgment and the

reasons must be made anonymous before publication.

For example these crimes can be committed by infringement of the Directives:

- i. Unauthorized Entrepreneurial Activities according to section 251 of the Criminal Code (imprisonment for up to eight years or a monetary penalty or punishment by disqualification).
- ii. Damage to the Consumer according to section 253 of the Criminal Code (imprisonment for up to eight years or punishment by disqualification or forfeiture of item).
- iii. Violation of Regulations on Rules of Competition according to section 248 of the Criminal Code (imprisonment for up to eight years or monetary penalty or punishment by disqualification or forfeiture of item)

<p><b>What are the possible administrative sanctions for the infringement of the Directives' provisions?</b></p>	<p>The most common administrative sanction in accordance with Act no. 634/1992 Coll., on Protection of Consumers, which may be imposed for the infringement is Fine. The administrative court will award the fine. Under the paragraphs (1) to (13) section 24 of this Law there are mentioned all kinds of offences committed by trader or legal entity, that could be punished by a fine. Paragraph (14) sets certain amounts of the fines. The fines under this paragraph are divided into five groups depending on seriousness of the offence committed. The groups are: fines up to CZK 1 000 000 (approx. EUR 40 000), fines up to CZK 2 000 000 (approx. EUR 80 000), fines up to CZK 3 000 000 (approx. EUR 120 000), fines up to CZK 5 000 000 (approx. EUR 200 000), fines up to CZK 50 000 000 (approx. EUR 2 000 000).</p> <p>There is no max. or min. amount of fines. (Repeated breaking of law can lead to higher fines)</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>Usually the situation is reversed. The contract loses its validity after infringement of law or contractual provisions and this is later object of a legal dispute. But in case of an infringement of law by for example by unfair commercial practices or misleading advertising, the court can decide that contracts concluded under such circumstances, when it is obvious, that the contract was not concluded fair, the court can stat, that the contract is not valid. In case of an unjust enrichment the contract is usually invalid due to the unfair transaction. The court or administrative authority can either force the correction or can cancel the contract according to the wish of the damaged party.</p>
<p><b>Can authorities order the trader to compensate consumers who have suffered harm as a result of the infringement?</b></p>	<ul style="list-style-type: none"> <li>• Yes, the authorities (especially courts) can order the trader to compensate consumers. However this is only possible, when the consumer or group of consumers ask for the compensation usually in form of lawsuit. The court nor the administrative authority cannot decide that the trader should compensate consumers without lawsuit of a consumer only based on the infringement. The authority can force the trader to rectify the situation by admonition or fines but not to compensate the consumers.</li> </ul>
<p><b>Can the administrative authorities or the courts require the publication of their decisions?</b></p>	<ul style="list-style-type: none"> <li>• Yes they can. As it was previously mentioned, punishment by publishing a sentence is enshrined in paragraph (4) section 155 of the Civil Procedure Code.</li> <li>• Publishing a sentence is also enshrined in section 23 of the Act no. 418/2011 Coll., on Corporate Criminal Liability.</li> <li>• As for the CTIA, the published results of inspections can be found at <a href="http://www.coi.cz/en/for-consumer/results-of-inspections/">http://www.coi.cz/en/for-consumer/results-of-inspections/</a></li> </ul>
<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>In the Czech Republic there is a Project of Alternative Dispute Resolution relating to consumer disputes (disputes arising from the contractual relationship between entrepreneur and consumer). In the event that the entrepreneur and consumer want to solve their dispute by alternative means, it is sufficient to fill out a simple form and send it to the appropriate point of contact. Officers shall provide qualified information and recommend methods of dispute resolution. If the dispute is not resolved soon thereafter, the officer shall arrange all essential steps necessary to initiate mediation or arbitration. Mediation is free of charge (remuneration of the mediator is paid by the Ministry). In the case of arbitration, a fee of 3% of the amount of the dispute must be paid (remuneration of the arbitrator is covered by the Ministry).</p> <p><a href="http://www.mpo.cz/cz/ochrana-spotrebitele/mimosoudni-reseni-spotrebitelskych-sporu-adr/">http://www.mpo.cz/cz/ochrana-spotrebitele/mimosoudni-reseni-spotrebitelskych-sporu-adr/</a></p>
<p><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>	<ul style="list-style-type: none"><li>• Yes, there is a system of the so-called "<u>consumer ombudsman</u>" that enables consumers to effectively and gratuitously enforce their consumer rights. The ombudsman is no authority, it just gives help needed to the consumers and gives them advice in situations of disputes with traders and has been established under section 20e of the Act No. 634/1992 Coll., on Protection of Consumers.</li></ul> <p><b>Subjects of out-of-courts dealings of consumers disputes</b></p> <p>Subjects of out-of-courts dealings of consumers disputes pursuant to this law are:</p> <ul style="list-style-type: none"><li>a) Financial Arbitrator in the area of financial services within the scope prescribed by the regulations governing financial arbitrator,</li><li>b) Czech Telecommunications Office in the area of electronic communications and postal services within the scope prescribed by the law regulating the electronic communications and postal services,</li><li>c) Energy Regulatory Office in the area of electricity, gas and heat supply within the scope prescribed by the law governing the electricity, gas and heat supply,</li><li>d) Czech Trade Inspection or other body authorized by the Ministry of Industry and Trade, in cases when not given the activity of the authorities referred to in subparagraphs a) to c); if the authorized entity is a professional chamber with mandatory membership, the chamber exercises the activity provided by another law</li></ul> <ul style="list-style-type: none"><li>• The <u>Czech Trade Inspection is also member of the ADR system</u>. This authority can resolve consumers disputes. It is easier and faster way for the consumer than court proceedings.</li></ul>