

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 caught as 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 caught as 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 providing 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 caught as UWG infringements under certain circumstances.
- The Austrian implementation laws of Directive 90/314 (Package Travel Directive) do not provide for administrative enforcement, thus the Directive may only be enforced through court action. Note, infringements could also be caught as UWG infringements under certain circumstances.
- The provisions of Directive 2009/22 (Injunction Directive) have already been implemented by the above mentioned

	<p>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.</p>
<p>Who can file administrative complaints? Can investigations be initiated ex officio?</p>	<p>Administrative proceedings are usually initiated ex officio but may also be initiated by other entities or persons.</p>
<p>Do any specific procedural requirements apply to filing administrative complaints?</p>	<p>The Austrian implementation laws of the Directives in scope do not provide specific procedural requirements in respect to filing administrative complaints.</p>
<p>Do the administrative authorities have an obligation to investigate the complaint?</p>	<p>The Austrian implementation laws of the Directives in scope do not provide for such obligations.</p>
<p>Are there any specific requirements regarding the provision of evidence to the competent authorities?</p>	<p>None of the Austrian implementation laws of the Directives in scope contain provisions of evidence.</p>
<p>II. ENFORCEMENT THROUGH COURT ACTION</p>	
<p>Which court actions are available to enforce the Directives?</p>	<p>In general a claim for civil damages under § 1293 et. seq. of the General Civil Law Act (<i>Allgemeines Bürgerliches Gesetzbuch - ABGB</i>) may be filed.</p> <p>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 judgment 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).</p> <p>The action for cease-and-desist (§§ 28, 28a UWG) is as well the main legal remedy to enforce Directives 1999/44 and 93/13.</p>
<p>Who can start a court action?</p>	<p>Anyone who has suffered damage is able to initiate a claim for civil damages under § 1293 of the ABGB.</p> <p>In respect to 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 (Bundswettbewerbsbehörde) and the Association for Consumer Information (Verein für Konsumenteninformation) in case of unfair B2C</p>

	<p>commercial practices can start actions for injunctive relief due to unfair commercial practices.</p> <p>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).</p> <p>Furthermore, consumers may file a claim for damages or file an action to rescind the contract according to the KSchG and ABGB.</p>
<p>Can court actions be initiated by competitors?</p>	<p>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.</p> <p>As of this the UWG allows actions by competitors even if they are not directly affected by the unfair commercial practice.</p> <p>In a general claim for civil damages, competitors may have legal standing if they have suffered damage.</p>
<p>Can the case be handled through an accelerated procedure?</p>	<p>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 judgment. The advantage of filing for an interim injunction is that the facts have not to be fully evidenced but only furnished on a prima facie basis.</p>
<p>Are there any specific requirements regarding the provision of evidence to the court?</p>	<p>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.</p> <p>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.</p> <p>Otherwise the implementation laws do not provide specific requirements regarding the provision of evidence.</p>
<p>Are there specific procedural reliefs for consumers or consumer associations?</p>	<p>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 have to know the general terms and conditions or standard contractual forms in order to pursue consumer interests.</p>

	<p>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.</p>
III. SANCTIONS	
<p>What are the possible civil sanctions and remedies for the infringement of the provisions of the Directives?</p>	<p>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 rather be interpreted as an indemnifying measure than as a sanction.</p> <p>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 are not directly resulting from the infringement of the Directives in scope.</p> <p>Furthermore for Directives 2005/29 and 2006/114 injunctive relief, removal of the impairment and publication of the judgment are the available civil remedies.</p> <p>For Directives 1999/44 and 93/13 the available remedy is an injunctive relief.</p> <p>The implementation laws of Directives 98/6 and 2008/122 do not provide civil sanctions for infringements of their provisions.</p> <p>All of these civil sanctions may be imposed by the competent civil courts.</p>
<p>What are the possible criminal sanctions for the infringement of the Directives' provisions?</p>	<p>As of 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.</p> <p>The other implementation laws of the Directives in scope do not provide criminal sanctions for the infringement of their provisions.</p> <p>Criminal sanction may only be imposed by the competent criminal courts.</p>
<p>What are the possible administrative sanctions for the infringement of the Directives' provisions?</p>	<ul style="list-style-type: none"> • 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 authorization of the Regional Administrative Authority, the prohibition of displaying not granted quality marks or 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).

	<ul style="list-style-type: none"> • 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), but 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. <p>The stated Austrian laws do not provide for a minimum fine but rather state the maximum amount which may be imposed upon an infringement. However, the Austrian Administrative Criminal Act states in § 13 that the minimum of an administrative fine is EUR 7,-.</p> <p>The Austrian law does not provide for differences in the amount of administrative fines depending on whether a natural person or legal person acted.</p> <p>The above-mentioned Austrian laws do not decide on the purposes to which the profits of the monetary fines are dedicated as this is</p>
<p>What are the contractual consequences of an administrative order or a judgment on an individual transaction under the Directives?</p>	<p>In general administrative orders do not have an effect on a contract. A judgment only produces effects between the procedural parties.</p> <p>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.</p>
<p>Can authorities order the trader to compensate consumers who have suffered harm as a result of the infringement?</p>	<p>The administrative authorities do not have the power to order the trader to compensate consumers who have suffered harm.</p> <p>Nevertheless may consumers file a claim for damages pursuant to the rules of Austrian tort law. But the Austrian statutes do not provide for collective redress (class actions). To protect the interests of consumers, the Association for Consumer Information may file an action for injunctive relief in case of unfair B2C commercial practices.</p>
<p>Can the administrative authorities or the courts require the publication of their decisions?</p>	<p>The administrative authorities do not have the power to order the publication of their decisions.</p> <p>Upon an action for cease-and-desist the court has to grant the successful party upon request and given a legitimate interest, the right to publish the judgment within a specified period at the cost of the losing party (§ 25 UWG).</p>
<p>IV. OTHER TYPES OF ENFORCEMENT</p>	
<p>Are there any self-regulatory enforcement systems in your jurisdiction that deal with aspects of the Directives?</p>	<p>In respect to Directives 2005/29 and 2006/114 the Austrian Advertising Standards Alliance (Österreichischer Werberat - ÖWR) was established which is an association with the object to control the advertising industry. The ÖWR established a Code of Conduct for Advertising to prevent misuse of advertising in order to protect consumers and it investigates complaints of consumers. The ÖWR evaluates the advertisement according to Austrian statutes and the Code of Conduct for Advertising and may decide to request change or stop of the advertising in the event of non-compliance. The decisions of ÖWR are</p>

	<p>available at http://www.werberat.at/default.aspx</p> <p>The Association on Consumer Information (Verein für Konsumenteninformation (VKI)) is an Austrian Consumer Organisation with the purpose of informing, advising and helping consumers to enforce their rights. Furthermore the VKI can file different kind of actions on behalf of consumers where the increased procedural risk would prevent the consumers from pursuing legal actions on their own and if there is a high public interest. More information on the VKI and decisions where the VKI was involved are available under https://vki.at/.</p>
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)?	<p>The Austrian Institute for Applied Telecommunications (Österreichisches Institut für angewandte Telekommunikation - ÖIAT), an independent non-profit organisation, developed the Internet Ombudsman in cooperation with the Federal Chamber of Commerce, the Association for Consumer Information and the two Federal Ministries (Justice and Economics). ÖIAT is now operating the service. The Internet Ombudsman is an alternative dispute resolution (ADR) service for consumers and undertakings dealing with complaints regarding E-commerce matters, in particular online-shopping (https://ombudsmann.at/).</p> <p>The Arbitration for Consumer Business (Schlichtung für Verbrauchergeschäfte) is an association which is responsible for all kind of consumer disputes regarding for example the purchase of goods, package holidays or problems with warranty etc. Therefore they merely provide a neutral platform for out-of-court settlements, but are not advising the parties (https://www.verbraucherschlichtung.at/).</p> <p>The participation in the proceedings offered by these organisations is completely voluntary for both sides, even though it is possible for undertakings to commit themselves to these proceedings.</p>