SWEDEN

Enforcement PDF (114 Kb) en

I. ADMINISTRATIVE ENFORCEMENT

Which administrative mechanisms are available to enforce the Directives?

In Sweden, the Swedish Consumer Agency (Sw. Konsumentverket) and the Consumer Ombudsman (Sw. Konsumentombudsmannen) are the supervisory authorities for a number of laws in the consumer area, inter alia, the Marketing Act (Directive 2005/29, partly Directive 1994/44 and Directive 2006/114), the Act on Contract Conditions in Consumer Relationships (Directive 93/13), the Price Indication Act (Directive 98/6), the Consumer Protection Act on Timeshare or Long-term Holiday Product Contracts (Directive 2008/122), the Distance and Off-Premises Contracts Act (Directive 2011/83) and the Act on Package Tours (Directive 90/314).

The Price Indication Act (Directive 98/6), the Consumer Protection Act on Timeshare or Long-term Holiday Product Contracts (Directive 2008/122), the Distance and Off-Premises Contracts Act (Directive 2011/83) and the Act on Package Tours (Directive 90/314) are enforced partly under the Marketing Act. Hence, when referring to enforcement actions under the Marketing Act, these directives and laws are included unless otherwise stated.

The Consumer Agency/Consumer Ombudsman are committed to the adherence to the laws that apply, and that consumer rights are respected. The Swedish Consumer Agency/Consumer Ombudsman are able to take action against, inter alia, misleading advertising and other types of marketing, unfair contract terms, incorrect price information and dangerous products and services. The authority provides information websites and services to traders and consumers. The Consumer Ombudsman is part of the Consumer Agency, its main tasks being to inspect the market and defend the consumers' interests against traders in court.

The general website of the Consumer Agency/Consumer Ombudsman can be found at http://www.konsumentverket.se/

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

The Consumer Agency and the Consumer Ombudsman allow administrative complaints to be filed by every natural or legal person. There is no need to prove a legitimate interest, although the Swedish Consumer Agency and the Consumer Ombudsman act on behalf of the consumer and will only further investigate complaints that relate to a consumer interest.

The Consumer Agency and the Consumer Ombudsman may initiate matters ex officio as well, even though the majority of matters are based on complaints made by consumers.

The Consumer Agency and the Consumer Ombudsman may initiate investigations based on information from other sources, for example regarding Directive 93/13 concerning matters in the National Board for Consumer Complaints (ARN) (please see below under IV).

Do any specific procedural requirements apply to filing administrative complaints?

A complaint to the Consumer Agency /Consumer Ombudsman can be filed online through the web service (http://www.konsumentverket.se/aktuella-konsumentproblem/anmal-till- konsumentverket/webbanmalan/)
or sent by mail to the authority (for information: http://www.konsumentverket.se/aktuella- konsumentproblem/anmal-till-konsumentverket/).

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

The Consumer Agency reviews and archives all complaints, but does not have any obligation to investigate all complaints further.

The Consumer Agency will only further investigate complaints that relate to a broader consumer interest. Such interest is found when the complaint is made by a consumer and the matter is of importance to many other consumers.

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

The consumer shall provide a copy (e.g., paper copy, photo or screenshot) of the advertising, contract term or anything else that the complaint refers to.

II. ENFORCEMENT THROUGH COURT ACTION

Which court actions are available to enforce the Directives?

Cease-and-desist orders:

Pursuant to the Marketing Act implementing the Directives and the Act on Contract Conditions in Consumer Relationships (Directive 93/13), a trader whose marketing practices are unfair, including, inter alia, omission to provide required information or price information to consumers, may be prohibited from continuing the practice or from adopting any other similar practice, under the penalty of fines.

Under the Marketing Act, such injunction may also be issued against an employee of the trader, any person acting on the trader's behalf or anyone who has substantially contributed to the marketing practice.

Pursuant to the Act on Contract Conditions in Consumer Relationships (Directive 93/13), the same injunction as above may be imposed by the Patent and Market Court against an organisation of traders that users recommend a contract term.

Information orders:

Pursuant to the Marketing Act implementing the Directives, a trader who in the course of its marketing fails to provide material information, may be ordered to provide such information under the penalty of fines.

Such an order may also be issued to an employee of the trader or any person acting on the trader's behalf.

The above does not apply to the Act on Contract Conditions in Consumer Relationships (Directive 93/13).

The Patent and Market Court is the competent court for the abovementioned orders.

Who can start a court action?

Proceedings in respect of an order or injunction under the Marketing Act implementing the Directives may be commenced by
the Consumer Ombudsman,
the trader affected by the marketing practices, or
an organisation of consumers, traders or employees.
Proceedings concerning a fine for disruptive marketing practices (see below under section III) shall be commenced by the Consumer Ombudsman. If the Consumer Ombudsman, in a particular case, decides not to commence proceedings for the imposition of a fine for disruptive marketing practices, an individual trader affected by the marketing practice, or an organisation of traders, may commence such proceedings.
Regarding the Act on Contract Conditions in Consumer Relationships (Directive 93/13), the Consumer Ombudsman may apply for an injunction to cease use of a contract term. However, if the Consumer Ombudsman decides not to file an application, an organisation of traders, consumers or employees may file such application.

Can court actions be initiated by competitors?
Yes, court actions may be initiated by competitors if such competitor is a trader affected by the marketing practices.
Regarding the Act on Contract Conditions in Consumer Relationships (Directive 93/13), only the Consumer Ombudsman may apply for an injunction to cease use of a contract term. However, if the Consumer Ombudsman decides not to file an application, an organisation of traders may file such application.

Can the case be handled through an accelerated procedure?
No general accelerated procedure exists. However, the Patent and Market Court may order that an injunction or an order shall apply until further notice, if the plaintiff establishes probable cause for its claim and it can be reasonably assumed that the defendant, by taking or omitting to take specific action, can reduce the effectiveness of an injunction or order. The decision may enter into force immediately.
Regarding the Act on Contract Conditions in Consumer Relationships (Directive 93/13), the Patent and Market Court may order that an injunction shall apply until the time a final decision has been made, if particular grounds exist.

Are there any specific requirements regarding the provision of evidence to the court?
The Swedish laws implementing the Directives do not contain such requirements. Consequently, the general rules on evidence as laid down in the Swedish Code of Judicial Procedure apply.
The Code of Judicial Procedure sets forth the principle of free assessment of evidence in its Chapter 35 § 1, which includes both the principle of the validity of any evidence and the free evaluation of evidence. With the validity of any evidence means that evidence, in principle, is not subject to restrictions on the sources that may be used to determine truth. The parties in a trial are therefore entitled to invoke any form of evidence, except for information subject to doctors' and lawyers' professional secrecy. The principle of free evaluation of evidence, in turn, means that the judge is free to determine the value of the evidence presented at trial.
Regarding the Act on Contract Conditions in Consumer Relationships (Directive 93/13), an organisation of traders, which is not a party to the case, may be allowed to participate in the proceedings and provide evidence if this is approved by the Patent and Market Court. The organisation of traders shall provide an application to the court in which it is made probable that the outcome of the case is of importance to the members of the organisation.

Are there specific procedural reliefs for consumers or consumer associations?
No such procedural reliefs exist.

III. SANCTIONS

What are the possible civil sanctions and remedies for the infringement of the provisions of the Directives?
Conditional fines:
Pursuant to the Directives (except Directive 93/13), implemented by the Marketing Act, an injunction to cease and desist and an order to provide information as described above under section II (Which court actions are available to enforce the Directives?), shall be issued in conjunction with conditional fines, unless special reasons render such fines unnecessary. Such conditional fines may be imposed by a court, or in cases of minor importance, by the Consumer Ombudsman.
There are no restrictions in terms of maximum or minimum amounts, and no particular link between the amount of the conditional fine and the trader's turnover. However, the amount of the conditional fine may be affected by the trader's financial strength. Thus, legal entities are likely to receive a higher conditional fine than a natural person.
The same applies for an injunction to cease and desist under the Act on Contract Conditions in Consumer Relationships (Directive 93/13).
Damages:
Pursuant to the Marketing Act implementing the Directives (except Directive 93/13), a trader who intentionally or negligently violates an issued injunction or order (please refer to section II above, Which court actions are available to enforce the Directives?) or a provision specifically specified in the Marketing Act such as, inter alia, the provisions of Annex I to Directive 2005/29/EC, shall compensate any consumer or trader for any damage suffered thereby.
The damages shall correspond to the damage suffered due to the violation. In determining the amount of compensation to be paid to a trader, account may be taken of circumstances other than those of a financial nature.
Exclusively financial damages are payable, and the obligation of damages requires adequate causality. The estimation of damages is made in relation to each case and is based on the circumstances thereof. Damages are estimated on an individual basis (i.e., not on a group basis, should the case be initiated by an organisation of consumers).
Removal:
Pursuant to the Marketing Act implementing the Directives (except Directive 93/13), in cases where a cease-and-desist order conditional on a fine has been violated, the court may order that any misleading presentation on goods, packaging, printed matter, business documents or suchlike be removed or altered so that it is no longer misleading. If that objective cannot be achieved in any other manner, the court may order that the property be destroyed.
The abovementioned also applies when breaching certain provisions of the Marketing Act (Directive 2005/29, partly Directive 1994/44 and Directive 2006/114).
Civil remedies:
Pursuant to the Consumer Contracts Act, if a provision has not been subject to individual negotiations between the trader and the consumer, the provision shall be interpreted in favour of the consumer in the event of a potential dispute.
If such provision is deemed unreasonable to the favour of the trader, the provision may be waived by the court.

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

In general, there are no such provisions under the laws implementing the Directives.

However, pursuant to Chapter 5, § 2 of the Consumer Protection Act on Timeshare or Long-term Holiday Product Contracts (Directive 2008/122), anyone who intentionally breaches the prohibition of advance payment may be sentenced to pay fines.

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

Injunctions and orders:

Under the Laws implementing the Directives (except Directive 93/13), the Consumer Ombudsman may, in cases of minor importance, issue orders concerning injunctions (cease and desist) and information orders. The orders shall be issued in conjunction with a conditional fine.

In order to be valid, an information order must be accepted by the trader immediately or within a specific period of time. If the order has been accepted, it shall apply as if it were the final judgement of a court.

Otherwise, the Consumer Ombudsman may, at its sole discretion, initiate legal proceedings.

Regarding the Act on Contract Conditions in Consumer Relationships (Directive 93/13), the Consumer Ombudsman may try matters that are of minor importance. The Consumer Ombudsman may decide that an injunction shall have immediate effect.

Inspections, documentation and information:

Pursuant to the Consumer Protection Act on Timeshare or Long-term Holiday Product Contracts (Directive 2008/122), and the Act on Package Tours (Directive 90/314), the Consumer Agency may conduct an inspection at the trader's premises and take part of documents that are needed for the inspection.

The Consumer Agency may order the trader to provide information regarding the business which is required for the inspection.

The Consumer Agency may, upon conditional fines, order the trader to provide documents and information.

Regarding the Act on Package Tours (Directive 90/314), the abovementioned applies also in relation to retailers.

Pursuant to the Act on Contract Conditions in Consumer Relationships (Directive 93/13/EC), the Consumer Ombudsman may order (i) anyone to provide information which is required for a matter under the Act, and (ii) a trader to provide documentation which may be of importance to a matter in which an injunction to cease and desist may be at hand.

Furthermore, the Consumer Ombudsman may, if required, order the trader to provide access to its premises or other spaces where the trade is conducted (except for residences) for inspection.

These orders may be issued upon the penalty of fines.

Fines for disruptive marketing practices:

Regarding the Marketing Act (only Directives 2005/29 and 2006/114), a trader may be obliged to pay a fine for disruptive marketing practices when violating specified provisions of the Marketing Act. The fine applies to, inter alia, violations of the provisions of Annex I to Directive 2005/29.

A fine for a disruptive marketing practice may be issued by the court if a trader, or any person acting on behalf of the trader, intentionally or negligently breaches the specified provisions in the Marketing Act. The fine may also be issued in respect of a trader that, intentionally or negligently, has materially contributed to the violation.

The fine for disruptive marketing practices shall be fixed at no less than SEK 10,000 and no more than SEK 10 million. The fine may not exceed 10% of the trader’s annual turnover. The court may furthermore issue a restraining order so as to secure a claim relating to a fine for disruptive marketing practices.

When determining whether a fine for disruptive marketing practice should be imposed or not, the severity of the infringement shall be taken into account, considering the duration, extent and proliferation of the infringement.

The fine accrues to the State.

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

There are no contractual consequences regarding the individual transaction of an administrative order or a judgement relating to the Directives. The abovementioned sanctions do not result in contractual invalidity or similar.

Can authorities order the trader to compensate consumers who have suffered harm as a result of the infringement?

Not to any further extent than the damages that may be ordered by the Patent and Market Court, as mentioned under section III (What are the possible civil sanctions and remedies for the infringement of the provisions of the Directives?).

Can the administrative authorities or the courts require the publication of their decisions?

Both the administrative authorities and the courts publish their decisions, which are publicly available. As a general principle under Swedish law, all correspondence with any authority (including courts) as well as any decisions or award, is publicly available and free for anyone to access.

Furthermore, an information order (refer to section II above) may include an obligation to provide the ordered information (i) in advertisements or other presentations used by the trader the course of marketing, (ii) through labelling of the goods or in another form at the point of sale, or (iii) in such form required by the consumers.

IV. OTHER TYPES OF ENFORCEMENT

Are there any self-regulatory enforcement systems in your jurisdiction that deal with aspects of the Directives?

Sweden has several self-regulatory enforcement systems. The most relevant examples are mentioned below.

The Swedish Advertising Ombudsman:

Regarding the Marketing Act (Directive 2005/29, partly Directive 1994/44 and Directive 2006/114), the Swedish Advertising Ombudsman (Sw. Reklamombudsmannen) (RO) acts as a self-regulatory organisation founded by the industry.

RO will, after receiving complaints regarding advertising, assess whether or not commercial advertising is in compliance with the Consolidated ICC Code.

Individuals, companies and other organisations may file a complaint against commercial advertising that may be in breach of the Consolidated ICC Code.

Only commercial advertising aimed at the Swedish market can be assessed. Editorial, religious or political content is not assessed.

The decisions are not binding, and no sanctions can be imposed. However, their decisions are published on the website http://reklamombudsmannen.org, in newsletters and press releases.

The Direct Marketing Board:

Regarding the Marketing Act (Directive 2005/29 and Directive 2006/114), the Direct Marketing Board (Sw. DM-nämnden) acts as a self-regulatory organisation founded by the industry.

The Board handles matters regarding the implementation of good market ethics. The Board also issues opinions, holds discussions with the authorities, and provides information on issues related to direct marketing.
Natural or legal persons may file a complaint with the Board regarding direct marketing. The Board will assess whether or not the direct marketing is unethical or against good market ethics. The assessment results in an opinion which is published, inter alia, on the Board's website http://dm-namnden.org. No sanctions can be imposed, and the opinions are not binding.
The work of the Swedish Consumer Agency/Consumer Ombudsman:
The Swedish Consumer Agency and the Consumer Ombudsman compose the supervisory authority of, inter alia, the marketing regulation and, in addition to the above-described measures, have their own self-regulatory enforcement system.
The Consumer Agency/Consumer Ombudsman publishes its own code of statute and related publications, such as, inter alia, The Nordic Consumer Ombudsmen's position on good marketing on the Internet, which is considered good practice.
The Consumer Agency/Consumer Ombudsman furthermore negotiates trade agreements that are indicative for both traders and consumers and provides guidance in relation to applicable laws and regulations.

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)?
The National Board for Consumer Complaints:
The National Board for Consumer Complaints (ARN) is a public authority that functions similar to a court. The main purpose of the ARN is to impartially try disputes between consumers and traders.
Petitions are filed by the consumer and must be in writing. However, before the complaint is filed with the ARN, the trader must have rejected the complaint in part or in whole (or not answered at all).
The process at the ARN is in writing. The ARN will allow the trader to reply to the consumer's claims. The consumer will also be allowed to respond to the company's response. Both parties have the right to submit written evidence in the form of contracts or certificates of inspection, for example.
The ARN will try the matter on the basis of the information and evidence provided by the parties. Hence, no further investigations or inquiries are made. The ARN submits recommendations on how disputes should be resolved, and the recommendations are not binding, although the majority of traders nonetheless follow them.
Pursuant to the Distance and Off-Premises Contracts Act (Directive 2011/83), the trader must provide information on the possibility to try the matter outside court, in the ARN.
The ARN tries a broad range of areas under the Directives. For more information on the different areas and terms and conditions, please see http://www.arn.se.
ODR:
Pursuant to the Distance and Off-Premises Contracts Act (Directive 2011/83), all traders that offer goods or services online must provide information on the Online Dispute Resolution (ODR) provided by the European Commission.
The ODR is provided via the website http://ec.europa.eu/odr.
The consumer may enter details regarding the complaint. When the trader has agreed, the ODR will put the consumer and trader in touch with a neutral third party – a dispute resolution body. The dispute resolution body helps the parties to negotiate an out-of-court settlement. The outcome of the dispute resolution body is not always binding. For more information, please see https://webgate.ec.europa.eu/odr/main/?event=main.help.faq.
Other alternative dispute resolution bodies:
The Legal, Financial and Administrative Services Agency (Sw. Kammarkollegiet) provides a complete list of the approved alternative dispute resolution bodies in Sweden, which can be found here:
http://www.kammarkollegiet.se/alternativ-tvistlosning/alternativ- tvistlosning/godkanda-namnder

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