

## I. ADMINISTRATIVE ENFORCEMENT

### Which administrative mechanisms are available to enforce the Directives?

National Acts implementing in Poland Directives 2011/83 (Consumer Rights), 1999/44 (Consumer Sales and Guarantees), 2005/29 (Unfair Commercial Practices Directive), 2008/122 (Timeshare), 2006/114 (Misleading and Comparative Advertising) do not provide any specific administrative mechanisms enabling enforcement of the Directives.

Nevertheless, there is an administrative mechanism for the protection of consumer rights that is included in another act of a general nature. In accordance with Article 100 of the Act on Competition and Consumer Protection (hereinafter referred to as the "CCP Act"), the President of the Office of Competition and Consumer Protection (hereinafter referred to as the "President of the OCCP"), may be notified about any suspected use of practices harmful to the collective interests of consumers. This authority is competent to issue a decision in a proceeding initiated in this way. Such mechanism may be used in various cases related to the collective rights of consumers.

Directive 93/13 (Unfair Contractual Terms Directive) is implemented by the Polish Civil Code, which provides only civil instruments to combat unfair contractual terms. However, the CCP provides for an administrative mechanism: in accordance with Article 99a of the CCP Act, a written notification with the President of the OCCP relating to a suspicion of the use of unfair contractual provisions may be filed. This authority is competent to issue a decision in a proceeding initiated in this way.

Directive 98/6 (Price Indication Directive) is implemented by the Act on Informing about Prices of Goods and Services. For infringement of this Act, financial penalties of an administrative nature may be imposed by the Commercial Inspectorate.

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

Any person may report, by written notification to the President of the OCCP, any suspected use of practices that are harmful to collective consumer interests. A notification may also be submitted by a foreign entity that is in the list of entities in EU Member States that are entitled to request the initiation of proceedings (this list is published in the Official Journal of the European Union). Such a foreign entity may notify of an infringement resulting from an unlawful act or a failure to act in the Republic of Poland that poses a threat to the collective interests of consumers in the Member State in which it has its registered office if the purpose of that entity justifies the notification. This does not alter the fact that proceedings in cases related to practices harmful to collective consumer interests are initiated ex officio (Article 49 of the CCP Act). This means that a consumer can notify the President of the OCCP of certain practices but cannot initiate the proceedings. Furthermore, the entities such as Polish consumer organisations or independent public bodies or qualified entities from other EU also may not initiate the proceedings.

In the case of Directive 93/13, proceedings are also initiated ex officio by the President of the OCCP (Article 49 of the CCP Act). However, in accordance with Article 99a of the CCP Act, a consumer, consumer ombudsman, insurance ombudsman, consumer organisation, or foreign organisation entered in the list of organisations authorised to commence proceedings in the European Union concerning alleged unfair provisions of a model agreement (this list is published in the Official Journal of the European Union), if the aim of its activities justifies making such a notification relating to model agreements used in the Republic of Poland that threaten consumer interests in an EU Member State in which the organisation has its registered office, may file a written notification with the President of the OCCP relating to suspicion of the use of unfair contractual provisions, but may not formally initiate the proceedings.

In the case of Directive 98/6, the Commercial Inspectorate can initiate proceedings ex officio.

### Do any specific procedural requirements apply to filing administrative complaints?

In the case of unfair contractual terms (Directive 93/13), the notification to the President of the OCCP made by the entitled person should include and specify, in particular: (i) the undertaking that is suspected of using a restrictive practice; (ii) a description of the findings that constitute the grounds for the notification; (iii) the contractual provision that is allegedly unfair; (iv) evidence of the alleged infringement with a sufficient indication of reliability; and (v) identification data of the notifying person. Any documents that may constitute evidence of the infringement of the provisions of the CCP Act must be attached to the notification. In the case of use of practices that are harmful to collective consumer interests the notification reported by the entitled person may include and specify, in particular: (i) the undertaking that is suspected of using a restrictive practice; (ii) description of the findings of fact that constitute the grounds for the notification; (iii) the provision of the Act or of the TFEU, the infringement alleged by the notifying person; (iv) demonstration of the infringement of the provisions of the Act or of the TFEU with sufficient indicia of reliability; (v) identification data of the notifying person. Any documents that may constitute evidence of the infringement of the provisions of the Act are attached to the notification.

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

The President of the OCCP issues an administrative ruling on the commencement of proceedings related to the alleged unfairness of provisions of a model agreement or practices allegedly harmful to collective consumer interests and informs the parties thereof. The parties are entities against whom the President of the OCCP initiated proceedings. In proceedings related to the alleged unfairness of provisions of a model agreement, entities are entitled to file a written notification under art. 99a of the CCP Act may take part in the proceedings as an 'interested party', i.e. be allowed to provide documents and explanations related to the case matter. The President of the OCCP initiates the proceedings if it is justified. No appeal against refusal to initiate proceedings following a written notification about the alleged infringement is possible and the notifying entity is only informed on how the President of the OCCP handled the notification. However, an entity entitled to become an 'interested party' may appeal against a refusal to allow it to take part in the proceedings (art. 99c s. 3 of the CCP act).

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

In accordance with Article 86(3) of the CCP Act, any documents that may constitute evidence of the infringement of the provisions of the Act must be attached to the notification made to the President of the OCCP.

## **II. ENFORCEMENT THROUGH COURT ACTION**

### **Which court actions are available to enforce the Directives?**

Civil proceedings: consumers may claim for damages or state that contractual terms are unfair on general terms in accordance with procedural rules provided in the Act of 17 November 1964 on the Code of Civil Procedure. In this manner, the consumer may protect its individual rights and interests. The lawsuit should be filed with the appropriate court in accordance with the general principles concerning the court's jurisdiction.

Civil proceedings (unfair trading practice under Act on Combating Unfair Competition which implements Directive 2006/114): in the event of an unfair trading practice being applied, the entrepreneur whose interests are threatened or undermined may demand before the court: (i) the discontinuation of the unfair practice; (ii) the removal of the effects of the unfair practice; (iii) that a relevant statement be made once or several times, specifying the required form and content of such a statement; (iv) repair of the damage caused, on general terms; (v) surrender of the wrongly acquired benefits, on general terms; (vi) award of an appropriate amount of money for social purposes associated with supporting Polish culture or protecting Polish national heritage - if the unfair trading practice was culpable. The court, at the request of an authorised person, may also rule on products, product packaging, advertising materials and other items directly associated with an unfair trading practice. In particular, the court may order them to be destroyed or credited to compensation. Proceedings are initiated in the first instance before the Regional Court.

Civil proceedings (unfair commercial practice under Act on Combating Unfair Commercial Practices that implements Directive 2005/29): in the event of an unfair commercial practice, the consumer whose interests have been threatened or infringed may demand before the court: (i) an end to this practice; (ii) that the consequences of this practice are remedied; (iii) that one or more declarations of appropriate content and form be made; (iv) that the damage caused be repaired in accordance with general rules, in particular the cancellation of the contract with the mutual obligation to return benefits and for the trader to reimburse the costs of purchasing the product; (v) that an appropriate amount of money be adjudicated for a specific social purpose relating to the promotion of Polish culture, the protection of Polish heritage, or consumer protection.

Administrative-civil proceedings: an appeal against a decision of the President of the OCCP on collective interests of consumers or unfair contractual terms should be filed with the Regional Court in Warsaw - the Court of Competition and Consumer Protection (hereinafter referred to as "the Court of CCP"). The decision of the President of the OCCP may concern, for example, practices infringing collective consumer interests or unfair contractual terms. The entities that are the recipients of the decision, or other parties to the proceedings, may initiate court action against the decision. Parties to the proceedings are parties against whom the proceedings have been initiated by the President of the OCCP and they are also the recipients of the decision. The interested party to the proceedings (e.g., consumer organisation, consumer ombudsman etc.) is informed about the outcome of the proceedings, however, it may not appeal against it. An appeal against a judgement of the Court of CCP is filed with the Court of Appeal in Warsaw. If a party is not satisfied with the judgement of this court, it may file a final appeal with the Supreme Court.

### **Who can start a court action?**

Civil proceedings: Any natural person, legal person and organisational unit other than legal persons, which has its legal capacity granted by statutory provisions, can be a party to court proceedings. According to Article 61 of the Code of Civil Procedure, also non-governmental organisations may, within the scope of their statutory duties, bring actions on behalf of a natural person, subject to his/her written consent, in matters concerning, for example, consumer protection. According to Article 633 of the Code of Civil Procedure, in cases related to the protection of consumer rights, the district (in Polish: powiatowy) consumer ombudsman may bring actions on behalf of citizens and also join proceedings at any stage, subject to the plaintiff's consent.

Civil proceedings (unfair trading practice under Act on Combating Unfair Competition which implements Directive 2006/114): the entrepreneur whose interest is threatened or undermined may initiate proceedings. In some cases, national or regional organisations whose statutory objective is to protect the interests of entrepreneurs may start a court action.

Civil proceedings (unfair commercial practice under Act on Combating Unfair Commercial Practices that implements Directive 2005/29): the consumer whose interests have been threatened or infringed and the Ombudsman, Financial Ombudsman, Consumer Ombudsman, and national or regional organisations whose statutory objective is to protect the interests of consumers, but only claiming cessation of the practice, issue of statement or a monetary sum ordered for a social cause associated with promoting Polish culture, protection of national heritage or consumer protection. Those civil proceedings are autonomous and independent from the administrative proceedings before the President of the OCCP

Administrative-civil proceedings: A party against whom the decision has been issued in administrative proceedings may appeal against a decision of the President of the OCCP to the Court of CCP.

### **Can court actions be initiated by competitors?**

According to Article 18.1 of the Act on Combating Unfair Competition (which implements Directive 2006/114), in the event an unfair trading practice is applied, the entrepreneur whose interests are threatened or undermined may initiate court proceedings.

Seeking damages on general terms in the civil proceedings is available also to competitors.

### **Can the case be handled through an accelerated procedure?**

In accordance with Article 5051 of the Code of Civil Procedure, a simplified procedure is applied to cases concerning contractual claims that fall under the jurisdiction of district courts if the value of the matter at issue does not exceed PLN 20 000, and in claims arising from a warranty, guarantee, quality guarantee or the non-compliance of consumer goods with a consumer sales contract if the value of the subject of the agreement does not exceed the same amount. There is no such accelerated/simplified procedure provided for administrative proceedings.

### **Are there any specific requirements regarding the provision of evidence to the court?**

General rules apply. However, in the court proceedings initiated by the appeal against a decision of the President of the OCCP, the documents containing trade secrets are protected - the court may, at the request of a party or ex officio, order the right of access of other parties to evidence enclosed by the parties to case files in the course of court proceedings to be limited, insofar as may be necessary, if access to such evidence could involve disclosure of trade secrets or other secrets protected under separate regulations.

In cases based on infringement of the Act on Combating Unfair Competition (the act which implements Directive 2006/114) the burden of proof of the validity of information displayed on products or product packaging, or statements made in an advertisement, rests on the person accused of an unfair trading practice associated with misleading information.

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

Consumers can seek legal assistance and information from the Consumer Ombudsman. The Consumer Ombudsman may file civil suits for consumers, as provided in art. 42 of the CCP Act. Suits filed by the Consumer Ombudsman are exempted from court fees.

According to Article 87 paragraph 5 of the Code of Civil Procedure, in cases related to the protection of consumer rights, a representative of an organisation whose statutory duties include protecting consumer rights may act as a proxy.

In accordance with Article 47930 of the Code of Civil Procedure, where a decision of the President of the OCCP is appealed against, the Court of CCP may, at the request of the party filing the appeal, suspend enforcement of the decision until the case is resolved.

In accordance with Article 11036 of the Code of Civil Procedure, cases arising from agreements in which the plaintiff is a consumer also fall under domestic jurisdiction if the consumer has its place of residence or usual stay in the Republic of Poland and if it took the actions necessary to conclude an agreement in the Republic of Poland. In such cases, the other party to an agreement with a consumer is treated as if it had a place of residence or registered office in the Republic of Poland if it has a branch or unit in the Republic of Poland and the agreement involves the operation of that branch or unit.

According to Article 1105 of the Code of Civil Procedure, an agreement that excludes the jurisdiction of Polish courts may not concern cases that result or could result from agreements concluded by a consumer that has its place of residence or usual stay in the Republic of Poland.

In cases based on infringement of the Act on Combating Unfair Competition (the act which implements Directive 2006/114), the burden of proof of the validity of information displayed on products or product packaging, or statements made in an advertisement, rests on the person accused of an unfair trading practice associated with misleading information.

In cases related to the use of an unfair commercial practice based on the Act on Combating Unfair Commercial Practices (that implements Directive 2005/29), the burden of proof lies on the trader who allegedly followed an unfair commercial practice.

Pursuant to Art. 24 of the Act on Consumer Rights, in cases related to distance or off-premises contracts, the burden of proof for proving that information obligations were fulfilled lies on the trader.

## **III. SANCTIONS**

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

Article 18 of the Act on Combating Unfair Competition (the Act which implements Directive 2006/114) provides that in the event an unfair trading practice is applied, the court may rule: (i) the discontinuation of the unfair practice; (ii) the removal of the effects of the unfair practice; (iii) that a relevant statement be made once or several times, specifying the required form and content of such a statement; (iv) repair of the damage caused, on general terms; (v) surrender of the wrongly acquired benefits, on general terms; (vi) award of an appropriate amount of money for social purposes associated with supporting Polish culture or protecting Polish national heritage - if the unfair trading practice was culpable. The court, at the request of an authorised person, may also rule on products, product packaging, advertising materials and other items directly associated with an unfair trading practice. In particular, the court may order them to be destroyed or credited to compensation.

Article 12 of the Act on Combating Unfair Commercial Practices (the act that implements Directive 2005/29) provides that in the event of an unfair commercial practice, the court may rule: (i) an end to this practice; (ii) that the consequences of this practice are remedied; (iii) that one or more declarations of appropriate content and form be made; (iv) that the damage caused be repaired in accordance with general rules, in particular the cancellation of the contract with the mutual obligation to return benefits and for the trader to reimburse the costs of purchasing the product; and (v) that an appropriate amount of money be adjudicated for a specific social purpose relating to the promotion of Polish culture, the protection of Polish heritage, or consumer protection.

General rules of civil liability always apply - damages may be awarded to the injured parties. However, those damages are of a compensatory nature and may not be regarded as a sanction per se.

In civil proceedings, the court may find contractual terms unfair.

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

Under Article 139b of the Code of Petty Offences, any person who, when acting in connection with their business activity and concluding a contract with a consumer, fails to satisfy information requirements or fails to hand over the document provided for in the Act on Consumer Rights of 30 May 2014, will be subject to a fine. (Implementation of Directive 2011/83). Such a fine may range from PLN 20 - PLN 5000.

Article 139a of the Code of Petty Offences provides for criminal sanctions for the infringement of the Act on Timeshare, i.e., if an entity concludes a timeshare contract without the required conditions and form, demands payment during a withdrawal period, or declares that the subject of the timeshare contract is ownership, it will be subject to a fine (ranging from PLN 20 - PLN 5000) or a penalty of restriction of liberty (1 month).

Under Article 15 of the Act on Combating Unfair Commercial Practices, anyone engaging in aggressive market practices may be subject to a fine. Such a fine may range from PLN 20 - PLN 5000. Decisions on the cases referred to in Article 15(1) are taken in accordance with the procedure laid down in the Code of Procedure for Offences of 24 August 2001. Pursuant to Article 16 of this Act, anyone engaging in unfair commercial practices involving the management of assets accumulated within a syndicated framework for the purpose of financing purchases with consumer participation may be liable to imprisonment ranging from three months to five years. Moreover, anyone engaging in unfair commercial practices involving the organization of a consumer syndicate as referred to in Article 16(1) may be liable to the same penalty. If the value of the assets accumulated within a syndicated framework for the purpose of financing purchases is large, the party that commits the offence referred to in Article 16(1) or (2) may be subject to imprisonment ranging from six months to eight years. Pursuant to Article 17, prosecution for the crimes and offences referred to in the Act on Combating Unfair Commercial Practices will take place at the request of the victim.

Profits from fines are allocated to the national budget.

The Act on Combating Unfair Competition (which implements Directive 2006/114) includes some provisions on criminal sanctions, but none of them refer to misleading or comparative advertising.

The Act on Package Travel and Related Travel Services (which implements Directive 2015/2302) states that anyone who declares a lower insurance premium in a statement made by an organiser and presented to The Insurance Guarantee Fund is subject to a fine, restriction of freedom, or up to 3 years of imprisonment. Also, running the activity of an organiser or a trader facilitating a linked travel arrangement without a suitable financial security against insolvency is subject to the same criminal consequences.

The provisions that implement Directives 1999/44, 93/13 and 98/6 do not contain criminal sanctions.

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

Under Article 106 of the CCP Act, the President of the OCCP may impose a financial penalty on an entity amounting to no more than 10% of the turnover that it generated (i.e., turnover generated by the entity which violated the CCP Act provisions) in the financial year preceding the year in which the penalty is imposed, if the entity, even if unintentionally, has committed acts that are harmful to the collective interests of consumers. Those financial penalties do not

depend on which provision of an implemented consumer Directive was infringed. The President of the OCCP when determining the fine takes into account the following aspects: the duration, extent, and market consequences of the infringement of the provisions of the CPP Act, whereas the extent of the infringement shall be evaluated by the President of the OCCP with account taken of the circumstances relating to the nature of the infringement and the activity of the entrepreneur constituting the subject of the infringement. There are also extenuating circumstances such as voluntary remediation of the consequences of the infringement, abandonment of the prohibited practices before or immediately after the commencement of the proceedings or undertaking activities at own initiative aimed at ceasing the infringement or remedying its consequences.

Under Article 106 of the CCP Act, the President of the OCCP may impose a financial penalty on an entity amounting to no more than 10% of the turnover that it generated in the financial year preceding the year in which the penalty is imposed, if the entity, even if unintentionally, has used unfair contractual terms (this potentially concerns practices that infringe the provisions of Directive 93/13). The abovementioned principles apply while determining the amount of the fine.

The CCP Act does not decide on any particular purposes to which the paid fines could be allocated. Profits of monetary fines imposed by the President of the OCCP are allocated to the national budget.

The Act on Package Travel and Related Travel Services (which implements Directive 2015/2302) provides for administrative penalties for infringing Regulation 1177/2010 ranging up to PLN 50,000 and for infringing Regulation 181/2011 ranging up to PLN 30,000. The fines may be imposed by a Marshall of a Voivodship. This Act does not provide for administrative sanctions in case of infringing the Directive's provisions.

Article 6 of the Act on Informing about the Prices of Goods and Services (the act that implements Directive 98/6) provides for administrative penalties. If a trader does not fulfil the obligations concerning information about the prices of goods and services, the provincial inspector of Commercial Inspectorate imposes a fine up to the amount of PLN 20,000. If a trader does not fulfil the obligations concerning information about the prices of goods and services at least three times in a period of 12 months from the date on which it was found to be in violation of these obligations for the first time, the provincial inspector of Commercial Inspectorate imposes a fine of up to PLN 40,000.

The Act on Consumer Rights (which implements Directive 2011/83), the Civil Code (which implements Directive 1999/44), the Act on Timeshare (which implements Directive 2008/122), and the Act on Combating Unfair Competition (which implements Directive 2006/114) do not provide for any administrative sanctions.

The President of the Office issues a decision to consider a practice harmful to the collective interests of consumers and to impose an injunction against that practice. In the decision, the President of the Office may define measures to remove the existing effects of infringement of the collective interests of consumers, and in particular, oblige the entrepreneur to submit, once or multiple times, a statement whose contents and form is defined in the decision. In the decision, the President of the Office may order to publish the decision in part or in whole, with indication whether the decision is final, in the form specified in the decision, at the entrepreneur's cost.

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

The President of the Office issues a decision deeming a provision of an agreement model as illicit and prohibiting its usage. In the decision, the President of the Office quotes the contents of the provision of an agreement model considered illicit. The President of the Office may define measures to remove the existing effects of infringement, in particular obliging the entrepreneur to 1) inform the consumers who are parties to agreements concluded on the basis of the model referred to in paragraph 1 that a provision of this model has been deemed illicit - in the manner defined in the decision 2) make one or multiple declarations of the contents and form specified in the decision. A final decision deeming a provision of an agreement model illicit takes effect in relation to the entrepreneur, whose contractual provision was determined as illicit, and with regard to all consumers who have concluded an agreement with the entrepreneur on the basis of the model indicated in the decision.

The court may find a contract concluded with a consumer contrary to a statute or if its purpose is to bypass a statute and as such invalid. For instance, that is the case if the terms of a contract concluded with a consumer have not been individually negotiated and shape his/her rights and duties in a manner that is contrary to good practice and grossly violate his/her interests (unfair contractual terms).

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

General rules on civil liability apply - repair of the damage caused may be sought by a consumer on general terms.

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

The President of the OCCP may order the publication of the decision, as a whole or in part, with an indication of whether the decision is final, in the form specified in the decision, at the guilty entity's cost (Articles 23b (3) and 26 (3) of the CCP Act).

In the case of criminal sanctions, the court may order the publication of the sentence in a particular manner if it is expedient (Article 31 § 1 of the Code of Petty Offences).

### **IV. OTHER TYPES OF ENFORCEMENT**

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

Poland has several self-regulatory enforcement systems. The most relevant example is Związek Stowarzyszeń Rada Reklamy (Union of Associations Advertising Council). It handles complaints against advertisements from both consumers and competitors and may recommend that advertisers either change or stop certain advertisements. Information on the Union of Associations Advertising Council can be found at <https://www.radareklamy.pl/english>.

Some sectors have separate self-regulation, e.g., a code of good practice in the advertising of dietary supplements has recently been created. An infringement of the code may lead to proceedings being initiated before the special "court" created by this code.

#### **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)?**

For the out-of-court settlement of disputes with consumers, the most relevant mechanism was introduced by the Act on the Out-of-Court Settlement of Consumer Disputes that entered into force in 2017 (it implements the EU Directive on alternative dispute resolution). The Act makes available the following out-of-court dispute settlement bodies:

a) non-public bodies specific for particular sectors and created by entities from those sectors (both existing and newly created bodies). For example, Arbiter Bankowy (Financial Arbiter), created by the Związek Banków Polskich (Polish Banks Association).

b) public bodies specific for particular sectors and created by or within public administration bodies. For example:

Koordynator do spraw negocjacji działający przy Prezesie Urzędu Regulacji Energetyki (Negotiation's coordinator working under the auspices of the President of the Energy Regulatory Authority),

Rzecznik Praw Pasażera Kolei działający przy Prezesie Urzędu Transportu Kolejowego (Railway Passengers Rights Ombudsmen working under the auspices of the President of the Office for Railway Transport),

Prezes Urzędu Komunikacji Elektronicznej (President of the Office of Electronic Communications),

Sąd polubowny przy Komisji Nadzoru Finansowego (Court of conciliation working under the auspices of the Financial Supervision Authority),

Rzecznik Finansowy (Financial Ombudsman).

c) horizontal entity — the Commercial Inspectorate handles cases from sectors that do not have their own specific bodies like the ones described above.

As a rule, this form of dispute settlement is voluntary (with exceptions such as proceedings before the Financial Ombudsman). Ruling issued in the proceedings are not binding.

Mediation and arbitration/conciliation proceedings are available. As a rule, they are voluntary.

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