SPAIN

Enforcement PDF (192 Kb) en

I. ADMINISTRATIVE ENFORCEMENT

Which administrative mechanisms are available to enforce the Directives?

In Spain, Directives 93/13 (Unfair Contract Terms), 98/6 (Price Indication), 1999/44 (Consumer Sales and Guarantees), 2005/29 (Unfair Commercial Practices), 2006/114 (Misleading and Comparative Advertising), Directive 90/314 ("Package Travel Directive"), and 2011/83 (Consumer Rights) are implemented by a number of pre-existing regulations, which have been adapted for harmonisation with the Directives, mainly: the Consumers and Users Act (Legislative Royal Decree 1/2007); the Unfair Competition Act (Law 3/1991); the Retail Trade Act (Law 7/1996); the Civil Procedural Act (Law 1/2000); the E-commerce Act (Law 34/2002); the General Telecommunications Act (Law 32/2003); the Standard Terms Act (Law 7/1998); and the General Advertising Act (Law 34/1988). Many of the precepts contained in the Directives were already covered by or have been added by way of specific amendments to the Spanish regulations listed above.

Implementation of Directive 93/13 in Spain has been carried out through Law 7/1998, on the General Conditions of Contract. Although it is true that with Law 26/1984, of July 19, General Law for the Defence of Consumers and Users (BOE No. 176, of July 24, 1984) the protection of consumers against abusive clauses was already guaranteed, it was necessary to approve a more complete law, which was Law 7/1998, which underwent several subsequent amendments, such as the one made by Royal Legislative Decree 1/2007, of November 16, approving the revised text of the General Law for the Defence of Consumers and Users and other complementary laws, specifically in articles 80 to 98.

In any case, unregulated aspects remain within the transposition of Directive 93/13 in Spain and this justifies that jurisprudence occupies a particularly relevant role to clarify aspects that have been left without regulation. Therefore, to understand these legal loopholes, it is easy to find both national and European judgements that help shape the protection of consumers in contracting.

Royal Decree 3423/2000, 15 December 2000, regulating the indication of the prices of products offered to consumers and users has transposed Directive 98 /6/CE, 16 February 1998, on consumer protection in the indication of the prices of products offered to consumers in Spain. RD 3423/2000 is in force.

Directive 1999/44/EU, without being repealed, has been superseded by Directive 2011/83 /EU. This means that European jurisprudence and European doctrine are developed on this latter Directive. This situation affects the national transposition in Spain. The national transposition was carried out on three norms: Law 23/2003, of 10 July; a material limited transposition in Law 47/2002, of 19 December; and finally, and more importantly, in Legislative Royal Decree 1/2007, of 16 November, which approves the revised text of the General Law for the Defence of Consumers and Users, and other complementary laws, which completely repealed Law 23/2003. The jurisprudence and the doctrine in Spain echo this situation. Besides, there are a number of other special laws and regulations dealing with consumer protection in specific sectors or activities. Numerous Spanish laws and regulations have been enacted as a result of the implementation of European Union Directives.

Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market, along with Directive 2006/114/EC concerning misleading and comparative advertising have been incorporated into the Spanish Legal system by Law 29/2009. This Law introduces a number of major modifications to the Unfair Competition Law (Law 3/1991, of 10 January, on Unfair Competition), to the General Advertising Law (Law 34/1988, of 11 November, on General Advertising), to the Royal Legislative Decree regarding the Consumers and Users Protection Law (Royal Legislative Decree 1/2007, of 16 November, approving the revised text of the General Law for the Defence of Consumers and Users and other complementary laws) and other complementary legislation, together with the Retail Trade Organisation Law (Law 7/1996 of 15 January 1996 on the Regulation of Retail Trade). The Law came into force in January 2010.

Implementation in Spain of Directive 2008/122 (Timeshare) has taken place by way of Law 4/2012, of 6 July 2012 on timeshare, long-term holiday product, resale and exchange contracts and tax regulations and of Law 22/2007, of 11 July 2007, on distance marketing of consumer financial services (Timeshare Legislation).

Implementation in Spain of Directive 2009/22/EC ("Injunction Directive") has taken place by way of Law 39/2002, of 28 October 2002, implementing several European Community Directives relating to the protection of consumer and user interests ("Law 39/2002").

There is no specific transposition measure since Directive 2009/22/EC is a codification of Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 (no longer in force, date of end of validity: 29/12/2009) on injunctions for the protection of consumers' interests.

The transposition of Directive 98/27/EC of the European Parliament and of the Council of 19 May (no longer in force), concerning injunctions for the protection of the interests of consumers and users, currently replaced by its codified version, Directive 2009/22/CE of April 23, was carried out by virtue of Law 39/2002, 28 October 2002, of transposition into the Spanish legal order of several Community Directives on the protection of the interests of consumers and users. This Law uses the technique of modifying various sectoral laws and some articles of the Civil Procedural Law and introduces through the Additional Provision 3 of the General Law of Consumers and Users, a generic cessation action in defence of the collective interests of consumers and users in case of absence of specific sectoral regulations, precept which is the precedent of the generic cessation action.

The Directive 2011/83/EU extends the harmonisation of the internal systems of the States under a full harmonisation approach, with specific exceptions, and introduces substantial changes in the current European regulations on contracts with consumers and users, collected in our internal law through the consolidated text of the General Law for the Defence of Consumers and Users and other complementary laws.

Law 3/2014, of 27 March, modifies the revised text of the General Law for the Defence of Consumers and Users and other complementary laws, approved by Royal Legislative Decree 1/2007, of 16 November 16, BOE nº. 117, 14 May 2014.

Royal Decree 1/2007 (article 47) and Law 7/1996 (article 63) establish that enforcement of regulations protecting consumers and users will be handled by the relevant Spanish administrations (national, regional and/or local).

In this regard, determination of the relevant body has to be made on a case-by-case basis and requires applying many different regulations (e. g. Royal Decree 1945/1983; Autonomous Regions Consumer Protection regulations, among others). However, independently of the actual body who should handle the case, complaints can always be submitted before the Local Consumer Information Offices (Spanish acronym - OMIC), which shall forward the case to a more appropriate body where necessary. An abstract of the rights granted in favour of consumers and users can be found here.

Enforcement of (i) the Timeshare Legislation, (ii) Law 39/2002 and of (iii) the General Advertising Act, Law 34/1988 is only possible through Court action.
By clicking here you can find a diagram of the claiming process either before the consumer protection authorities or before the court.
Where agreed by the parties in writing and voluntarily, consumers and users may address a conflict to arbitration, provided that the reason for the conflict is not intoxication, personal injury, or death, and there is no rational evidence of criminal activity. The courts comprising the Consumer Arbitration System (Juntas Arbitrales de Consumo) are the National Court (Junta Arbitral Nacional) and the territorial courts (Juntas Arbitrales territoriales).
Finally, companies are legally required to make available to consumers Claim Forms (Hojas de Reclamación). These Claim Forms can be filled in at the commercial establishment for submission to the local authorities.

Who can file administrative complaints? Can investigations be initiated ex officio?
According to Legislative Royal Decree 1/2007 (Consumers and Users Act), which establishes the concept of consumer, in relation with autonomous regions regulations creating Local Consumer Information Offices (OMIC), administrative complaints (which will always refer to consumer protection matters) can be filed by any individual or entity when is not exercising a professional or business-related activity. In some cases, consumers and/or users associations are also entitled to file them on behalf of its members. Finally, complaints can also be filed anonymously. There are no limitations applying to filing of the complaints, exception made of the limitations mentioned above regarding the concept of consumer: any individual or entity when it does not exercise a professional or business related activity.
National Associations of Consumers and Users (ADICAE, ASGECO, AUC, CEACCU, CECU, FACUA, FUCI, HISPACOOP, OCU, UCE , UNAE) launch judicial campaigns for affected consumers and users to join and claim for their rights.
In general, investigations can also be initiated ex officio by the Consumer Protection Authorities. Please note that these actions will be executed by the different regional and local authorities. Click here to find information on the actions undertaken in 2016 by one of the Spanish autonomous regions (Andalusia).

Do any specific procedural requirements apply to filing administrative complaints?
Procedural requirements are different in attention to the actual body in charge of the enforcement. However, no formalities at all are required. It will always be sufficient to submit the complaint in writing, explaining the situation in a clear manner and properly identifying the parties involved.
Complaints submitted before the OMIC have to be filed in writing (either by physical or by electronic means) and can be accompanied by any documental evidence (such as a purchase receipt). If the complaint is communicated by electronic means, it shall be formalised in the relevant form as issued by the relevant regional body and available on the Internet (e.g. Madrid Autonomous Region allows downloading of the form here). Additional information in English on this matter can be found here.

Do the administrative authorities have an obligation to investigate the complaint?
No. Administrative authorities can dismiss a complaint when the facts or conduct complained of cannot be proven and/ or qualified as a legal infringement.

Are there any specific requirements regarding the provision of evidence to the competent authorities?
No specific requirements have to be met. Complaints can be accompanied by any evidential documentation.

II. ENFORCEMENT THROUGH COURT ACTION

Which court actions are available to enforce the Directives?
Claim for damages. When basic consumer rights such as protection against risks that may affect their health or safety or their legitimate economic and social interests are not respected, consumers can claim for compensation for damages and redress for the harm suffered. All types of damages are recoverable as long as the claimants can establish beyond doubt that there is a causal relationship between that damage and the acts or omissions of the defendant. Compensatory and punitive damages are not recoverable in civil procedures, however.
The cessation action is aimed at obtaining a judge's resolution ordering the company to cease a behaviour in prejudice of consumers and users, and refrain from any future recurrence. This action may be exercised to prohibit the performance of a future conduct if the conduct had already ended when the action was carried out.
The Standard Terms Act provides for two additional actions to challenge standard term clauses. In addition to the cessation action, actions can be exercised in order to obtain a judge's resolution that forbids a company from recommending the inclusion of specific standard-term clauses (acción de retractación) so as to obtain a judge's resolution declaring that a clause is considered as a standard term clause and that, therefore, it must be registered with the Standard Terms Register.
Consumer related actions are known by the civil division courts, which know not only matters of a civil nature, but also other matters not allocated to other jurisdictional divisions, like, for example, commercial or consumer protection matters.
The criminal division courts will know of any matters of a criminal nature, except for those allocated to the military division.
Appeals against the inactivity of the public authorities will be known by the contentious-administrative division courts. Civil actions will be known by:
Magistrates Courts ("Juzgados de Paz"). They are located in small towns where there are no Courts of First Instance (and/or Criminal Investigating Courts) and with jurisdiction in both civil and criminal matters of minor significance.
Courts of First Instance ("Juzgados de Primera Instancia"). They may simultaneously act as Criminal Investigating Courts ("Juzgados de Primera Instancia e Instrucción").

Who can start a court action?
Any consumer who has suffered any damage can file a claim in court individually.
Spanish law does not provide for a standard collective settlement of claims for civil damages (class actions). However, article 6 of the Spanish Civil Procedure Act establishes that consumer groups or users affected by a harmful event, provided that such groups are composed of individuals who are determined or readily determinable, can initiate civil actions provided the group is constituted with a majority of those affected. Additionally, the Public Prosecutor Office (Ministerio Fiscal) and those entities qualified under European Community regulations for the exercise of the injunction in defence of collective interests and the general interests of consumers and users can also initiate civil actions.

Can court actions be initiated by competitors?
In a general claim for civil damages, competitors may have legal standing if they have suffered damage. However, where the claim arises from a consumer protection situation, they will rarely be entitled to join civil litigation. More frequently, competitors will initiate unfair competition actions.

Can the case be handled through an accelerated procedure?

The Spanish Civil Procedural Act states that all civil and commercial claims must be decided either through the so-called (i) ordinary proceedings or (ii) verbal proceedings. There are no accelerated instances to which consumers can benefit from.

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

As a general rule, in Spain, evidence is evaluated on the basis of the principle of free evaluation of evidence by both administrative bodies and courts of justice.

In general, if there are no specific rules on evidence, the trial court judge shall assess the importance and value of each piece of evidence and each fact according to his own personal conviction (appréciation souveraine).

However, pieces of evidence must always be obtained lawfully to be acceptable.

Under Spanish law, disclosure does not take place between the parties, but only before the Court. Article 256 of the Spanish Civil Procedural Act provides for a pre-trial action so that the claimant can obtain documents or learn about some facts in order to prepare his claim.

Are there specific procedural reliefs for consumers or consumer associations?

Pursuant to the Spanish Civil Procedural Act, collective redress resources are available only for the purposes of cessation or prohibition (declaratory and injunctive relief), as consistent with civil law regulations stating that damages should not be awarded to non-parties. However, since 2000, compensatory relief is available in consumer affairs, and since 2007 is also available in gender equality matters. This means that consumers who did not participate in a given claim can benefit from the relief obtained by the claimant if so declared by the judge. A compensatory claim grounded in article 12.3 of the Standard Terms Act is also only possible when consumers are involved.

III. SANCTIONS

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

Generally speaking, civil actions allow the claimant to obtain remedies ordering the cessation of the relevant infringement/s and awarding damage compensation and redress for the harm suffered.

On top of this, courts can also issue declarative orders, for instance, in respect to the abusive condition of a contract provision.

In particular, it is also possible to exercise:

actions declaring the unfairness of a behaviour/ conduct;

actions ordering the cessation of an unfair conduct or prohibiting its future repetition;

actions to remedy the effects of an unfair conduct;

actions to rectify provided misleading, incorrect or false information;

actions for unfair enrichment; among others.

Competent courts can also order the publication of the judgement ruling on standard term conditions cases.

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

Specific criminal offences against consumers are regulated in the Spanish Criminal Code in Section 3, Chapter 11. However, there are other situations where regular criminal offences can be actioned as a result of consumer protection matters.

It must be noted that, for certain types of criminal offences, companies can be held criminally liable for acts committed, in their (direct or indirect) benefit, by: a) the legal representatives or by those with authorised decision-making authority or control authority (senior Management) b) individuals under the management of others (a), if the commission of the offence was possible due to the lack of surveillance and control by a).

Sanctions can include: (i) imprisonment, (ii) economic penalties, (iii) disqualification for developing a certain activity or being appointed for a given position, (iv) closure of premises, (v) suspension of company activities, (vi) Court intervention, (vii) disqualification for obtaining public subsidies and assistance.

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

The Legislative Royal Decree 1/2007 (Consumers and Users Act) and the Retail Trade Act (Law 7/1996) set forth the following penalty systems:

Article 51 of Legislative Royal Decree 1/2007:

Minor Infringements: fines up to EUR 3,065.06.

Serious infringements: fines from EUR 3,005.07 to EUR 15,025.30.

Very serious infringements: fines from EUR 15,025.31 to EUR 601,012.10.

Serious and very serious infringements can give rise to penalties over the amounts abovementioned of up to five times the value of the good or services connected to the infringement. When very serious infringements have been committed, additional penalties such as the temporary closure of the premises can be imposed. Other ancillary sanctions can be imposed: e.g., seizure of the altered, counterfeited, or fraudulently obtained materials; or publication of the sanction.

Article 68 of the Retail Trade Act:

Minor Infringements: fines up to EUR 6,000.00.

Serious infringements: fines from EUR 6,000.00 to EUR 30,000.00.

Sanctions may entail seisure and loss of the goods subject of the commercial activity concerned. Temporary closure of the premises (for a maximum term of one year) can be ordered if it was the third time the infringer committed a very serious infringement.

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

Contracts with consumers can be declared void and or unfair in court. In particular, where these are adherence terms and conditions, they can be declared partially or entirely null and void if the consumer proves them to be unclear or abusive in any sense. There is recent case law in particular regarding timeshare contracts not complying, to the letter, with the provisions

contained in the various laws implementing Directive 2008/122/EC, which can be declared void and null, granting consumers a right to claim for refunds.

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

Consumers have the possibility of filing a claim for civil damages even where they have not launched any consumer protection actions before the consumer protection authorities.

Furthermore, consumers may also rely on the abovementioned claim for collective redress to achieve compensation. This is on the condition that the consumer has been included in the group of harmed consumers created specifically for the purpose of tallying the parties requesting compensation.

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

Administrative sanctions can include the publication of their decisions. As indicated above, according to article 51 of Legislative Royal Decree 1/2007 (Consumers and Users Act), when very serious infringements have been committed, additional penalties such as the publication of the sanction can be imposed. Furthermore, article 221.2 of the Spanish Civil Procedure Act (Law 1/2000) establishes that the Court in charge of deciding in proceedings on the defence of collective interests and the general interests of consumers and users, may order to publish all or part of the decision, or when the effects of the infringement can be maintained over time, a rectifying statement.

IV. OTHER TYPES OF ENFORCEMENT

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

Yes. Regarding advertising, there is a Self-Regulatory Organisation, the "Asociación para la Autorregulación de la Comunicación Comercial (AUTOCONTROL)". It is composed of the main advertisers, agencies and media agents (TV, press, outdoor, radio, Internet…) in Spain, as well as the main advertising industry associations. Autocontrol receives complaints from either individuals/ consumers, associations and legal entities that consider that advertising materials produced by a third party infringe their rights and the General Advertising Act (Law 34/1988).

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 Spanish Consumer Arbitration System, in charge of dealing with and resolving complaints against companies, not against individuals (actions against individuals can only be brought through Court), may act either as a mediator or arbitrator with regard to such complaints. Arbitration is not possible though in the following cases: - Cases of poisoning, injury or death. - If there are reasonable indications of a serious criminal infringement having been committed. - Cases arising from companies that have closed down. - If the company is not willing to go to arbitration. - If the Chair of the Consumer Arbitration Tribunal judges the complaint to be unfounded or decides that consumers economic interests have not been affected. AUTOCONTROL also operates as mediator/ arbitrator if the parties agree with this.

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