

## I. ADMINISTRATIVE ENFORCEMENT

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

In France, 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), and 2011/83 (Consumer Rights) are implemented by the French Consumer Code (hereinafter "CC"). Directive 90/314 (Package Travel) has been implemented in the French Tourism Code.

Pursuant to articles L. 511-5 and L. 511-6 of the CC, the Directorate-General for Competition, Consumer Affairs and Prevention of Fraud (hereinafter the DGCCRF: "Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes") enforces the rules laid out in the CC.

Sworn agents of the DGCCRF, and related local departmental directorates for population protection (hereinafter "DDPP"), may make enquiries and ascertain offences under the CC (on-site controls, access to documents, seizure of samples etc.). With the prior authorisation of the Ministry of Economy or a judge, these agents can carry out inspections, see and read all relevant documents, carry out seizures, ask the authority to designate an expert and summon persons (articles L. 450-1 to L. 450-4 of the French Commercial Code and L. 512-51 et seq. of the CC). In case of criminal offences, the DGCCRF may settle the case, with the approval of the public prosecutor ("Procureur de la République"), provided that a public action has not been initiated.

If they note a CC violation, the DGCCRF and DDPP may order the professional to comply with their obligations by, for instance, ceasing an unlawful practice or deleting an unfair clause (L. 521-4 and seq. CC).

There are also Regional Directorates for Companies, Competition, Consumer Affairs, Labour and Employment (hereinafter "Regional Directorates": Directions Régionales des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi). However, the regional directorates have no direct enforcement authority.

Further information on the scope of DGCCRF's activity and investigative powers may be found at <http://www.economie.gouv.fr/dgccrf/La-DGCCRF/Missions>.

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

Any consumer, merchant or association may file a complaint with the DGCCRF. No legitimate interest is required and complaints may be filed anonymously. Investigations may be initiated ex officio.

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

Complaints may be made (i) by telephone, (ii) via the DGCCRF's website, or (iii) via regular mail to the DDPP of the place of the professional's place of establishment.

Note that in the event professionals are located outside of France, the DGCCRF has designated specific Regional Directorates for certain European countries in order to facilitate communication with organisations for consumer protection and local authorities in charge of consumer protection.

Relevant contact information may be found at <http://www.economie.gouv.fr/dgccrf/contacts> and <http://www.economie.gouv.fr/dgccrf/consommation/Resoudre-un-litige-de-consommation>

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

The aforementioned administrative authorities do not have an obligation to investigate.

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

There are no specific requirements.

In terms of comparative advertising, the advertiser on whose behalf the comparative advertising is disseminated must be able to prove, within a short period of time, the substantive accuracy of the statements, indications and presentations contained in the advertisement (article L. 122-5 of the CC).

## II. ENFORCEMENT THROUGH COURT ACTION

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

Depending on the applicable provisions, proceedings may be brought before civil courts or, in some cases, criminal courts.

As applicable, it is possible to apply to join criminal proceedings initiated by the public prosecutor, as a civil party.

Consumers may also file complaints with the public prosecutor ("Procureur de la République"), after which there may be preliminary investigations, followed by the filing of criminal charges.

### Who can start a court action?

Civil actions may be brought by:

Consumers;

Competitors;

Public authorities;

An approved association ("collective redress")

Although French law does not provide for "class actions" as per the common law meaning, articles L. 623-1 et seq. of the CC provide that where several consumers, identified as natural persons, have suffered individual harm caused by the same commercial act and having a common origin, then, any approved association recognised as being representative on a national level may institute legal proceedings to seek damages on behalf of these consumers.

Such claims must be made before the Court of First Instance ("Tribunal de grande instance") of the defendant's domicile, the Court of First Instance of Paris having jurisdiction if the defendant is established abroad. The scope of the claim is limited to compensate pecuniary damages due to property damages incurred by the consumers.

The courts' decision will include determining

- (i) the admissibility of the claim,
- (ii) whether the professional can be held liable,
- (iii) the relevant group of consumers and the conditions for being included in said group,
- (iv) the damages likely to be covered by the lawsuit,
- (v) their amount or any elements needed for their calculation.

Criminal actions may be brought by:

- o the public prosecutor

The case may be brought to the public prosecutor by (i) a consumer, (ii) a competitor, or (iii) agents of the DGCCRF, the DDPP, the Directorate General of Food at the Ministry of Agriculture ("Direction générale de l'alimentation du Ministère de l'agriculture") and agents of the Department of Metrology at the Ministry of Industry ("Service métrologie au Ministère de l'industrie"). The latter are authorised to establish evidence of CC violations by means of statements, which are sent to the public prosecutor.

- o Consumers and Competitors:

- if charges are filed by the public prosecutor (articles 87 and 418 et seq. of the French Criminal Procedure Code), or
- if the public prosecutor informs them that he/she will not institute legal proceedings, or if he/she does not respond within three months after having received the complaint or a copy thereof, the victim(s) can then file complaints with the investigating magistrate and become civil party(ies) (article 85 of the French Criminal Procedure Code).

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

Competitors may initiate civil proceedings on the basis of tort law principles (article 1240 of the Civil Code), i.e., provided that said competitor proves it suffered harm or loss as a result of unfair competition. Indeed, the French Supreme Court ("Cour de Cassation") has ruled that a competitor can initiate such actions against another to force compliance with the CC, if the competitor can demonstrate a legitimate interest (example: Cour de cassation, Chambre commerciale, 25 April 2001, N° 98-12.874).

Furthermore, article L. 121-5 CC states that the provisions on misleading commercial practices (more specifically articles L. 121-2 and L. 121-4 CC) are also applicable to practices directed at professionals. Therefore, in respect of those provisions, professionals may also initiate proceedings on the basis of a breach of the CC.

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

In case of urgency the court may order, in summary proceedings ("en référé") all measures which do not encounter any serious dispute or which are justified by the existence of a dispute (articles 808 and 872 of the Civil Procedure Code).

Furthermore, interim or restorative measures may be ordered in summary proceedings to prevent imminent damage or cease a manifestly unlawful disturbance (articles 809 and 873 of the Civil Procedure Code).

Finally, articles L. 623-14 et seq. CC provide for an accelerated collective redress procedure for cases where the identity and the number of all concerned consumers is known and said consumers have suffered

- (i) the same damage or
- (ii) a damage of the same amount with regards to the relevant service or period of time.

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

Depending on the jurisdiction, the general rules on evidence as laid down in the Civil Procedure Code or the Criminal Procedure Code apply.

In cases of misleading commercial practice, criminal courts may order any party to supply all relevant documents pursuant to article L. 132-6 CC, implementing Directive 2005/29 (Unfair Consumer Practices). In case of refusal, courts may order seizure of such documents or any other necessary investigative measure.

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

Any French resident who wishes to assert their rights (whether as a claimant or defendant) may apply for legal aid ("aide juridictionnelle") if (i) their resources are lower than a certain amount, (ii) the claim is not inadmissible or lacking a basis, and (iii) they do not have insurance covering legal costs. This aid is applicable in both civil and criminal proceedings.

### **III. SANCTIONS**

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

Payment of compensation for incurred damages (article 1240 of the Civil Code).

Some administrative fines are decided and implemented by the administration itself. For others, the DGCCRF initiates the procedure but does not take the decision itself, which falls within the competence of the civil or criminal judge. Depending on the type of breach, the company may be summoned to pay a fine or the administration may itself impose an administrative sanction: a fine with or without publication of the sanction decision.

Nullity of the contract for

- o breach of provisions on timeshare contracts (article L. 242-26 CC implementing Directive 2008/122 (Timeshare))
- o aggressive commercial practices (article L. 132-10 CC implementing Directive 2005/29 (Unfair Commercial Practices))
- o breach of provisions on distance contracts (articles L. 242-1 and L. 242-2 implementing Directive 2011/83 (Consumer Rights)) Ø More specifically, nullity of clauses in which the consumer waives his right of withdrawal applicable to distance contracts (article L. 242-3 implementing Directive 2011/83 (Consumer Rights)).

The following are deemed not written (unenforceable)

- o contracts which exclude or limit the conformity warranty, the commercial warranty and the after-sales services (article L. 241-5 CC implementing Directive 1999/44 (Consumer Sales and Guarantees)).
- o unfair terms in contracts as defined in article L. 212-1 and L. 212-2 CC (article L. 241-1 CC implementing Directive 93/13 (Unfair Contract Terms)).

Interest rate applied to the amounts paid by the consumer which have not been reimbursed by the professional under articles L. 221-18 to L. 221-28 in relation to right of withdrawal applicable to distance and off-premises contracts; the interest rate being determined in proportion to the delay of reimbursement (articles L. 242-4 and L. 242-15 CC implementing Directive 2011/83 (Consumer Rights)).

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

Up to one year's imprisonment and a criminal fine of up to EUR 15,000 (multiplied by five for legal entities), for breach of the provisions on engaging in or providing (i) assistance in the organisation or sale of individual or group travel or stays, (ii) services which may be provided in connection with travel or accommodation and (iii) services related to hosting of tourists (article L. 211-23 of the Tourism Code implementing Directive 90/314 (Package travel)).

Shut down (permanently or for a period of up to 6 months) of the establishment or of one or more of the establishments operated by the convicted persons for breach of the provisions on engaging in or providing

(i) assistance in the organisation or sale of individual or group travel or stays

(ii) services which may be provided in connection with travel or accommodation and

(iii) services related to hosting of tourists (article L. 211-23 of the Tourism Code implementing Directive 90/314 (Package travel)). Non-compliance with the shut-down measure is enforceable by the public prosecutor.

Criminal fine of up to EUR 150,000 (multiplied by five for legal entities) for

o disseminating or distributing advertising which does not comply with the requirements of articles L. 224-71 and L. 224-72 (article L. 242- 27 CC implementing Directive 2008/122 (Timeshare));

o offering a consumer the conclusion of timeshare contracts, long- term holiday product contracts or exchange contracts which do not comply with the provisions of articles L. 224-73 to L. 224-75 (article L. 242-28 CC implementing Directive 2008/122 (Timeshare)).

Criminal fine of up to EUR 300,000 (multiplied by five for legal entities) for

o requiring or receiving from the consumer, directly or indirectly, any payment or undertaking to pay, in any capacity and in any form whatsoever, before the expiry of the withdrawal periods provided for in articles L. 224-79, L. 224-80 and L. 224-81 (article L. 242-29 implementing Directive 2008/122 (Timeshare));

o charging the consumer exercising his right of withdrawal any costs, including costs pertaining to any services provided, before the exercise of his right of withdrawal (article L. 242-30 CC implementing Directive 2008/122 (Timeshare)).

Dissemination, at the expense of the guilty party, of one or more rectification notices and, in case of non-compliance with such obligation, dissemination by the public prosecutor at the expense of the guilty party for

o breach of the provisions on misleading commercial practices (article L. 132-4 CC implementing Directive 2005/29 (Unfair Commercial Practices)).

o breach of the provisions on comparative advertising (article L. 132 -25 CC implementing Directive 2006/114 (Misleading and Comparative Advertising)).

Up to two years' imprisonment and a criminal fine of EUR 300,000 (multiplied by five for legal persons) or in proportion of the undue advantage, 10% of the average annual turnover for the three years preceding the breach or 50% of the costs of the advertising or practice for breach of articles L. 121-2 to L. 121-4 CC (article L. 132-2 CC implementing Directive 2005/29 (Unfair Commercial Practices)).

Up to two years' imprisonment and a criminal fine of up to EUR 300,000 (multiplied by five for legal entities) for

o non-compliance with the obligation to disseminate the rectification notices following a breach of the provisions on Unfair Commercial Practices (article L. 132-5 CC implementing Directive 2005/29 (Unfair Commercial Practices))

o breach of the provisions on comparative advertising (article L. 132-25 CC implementing Directive 2006/114 (Misleading and Comparative Advertising)).

o non-compliance with the court's decision to stop a misleading commercial practice (article L. 132-9 CC implementing Directive 2005/29 (Unfair Commercial Practices)).

Penalty of up to EUR 4,500 per day for failure to communicate documents ordered by the court in the context of an investigation of Unfair Commercial Practices (article L. 132-6 CC) and/or comparative advertising (article L. 132-25 CC).

Order of the cessation of the practice for

o misleading commercial practices (article L. 132-8 CC implementing Directive 2005/29 (Unfair Commercial Practices))

o breach of the provisions on comparative advertising (article L. 132 -25 CC implementing Directive 2006/114 (Misleading and Comparative Advertising)).

Up to two years' imprisonment and a criminal fine of up to EUR 150,000 (multiplied by five for legal entities) for

o failure to provide the consumer with a copy of the contract concluded off-premises or provision of a copy not complying with the requirements of article L. 221-9 CC (article L. 242-5 implementing Directive 2011/83 (Consumer Rights))

o failure to provide the consumer with a form relating to the right of withdrawal (article L. 242-6 CC implementing Directive 2011/83 (Consumer Rights))

o receiving or requiring payments or consideration from the consumer before the expiration of a seven-day period after the conclusion of the off-premises contract (article L. 242-7 (Consumer Rights))

Prohibition for a period of up to five years to carry out directly or indirectly a commercial activity for natural persons breaching the provisions on aggressive commercial practices (article L. 132-12 CC implementing Directive 2005/29 (Unfair Commercial Practices)) Additional sanctions specific to natural persons.

Prohibition for a maximum period of five years to hold public office or to undertake the social or professional activity in the course of which or on the occasion of performance of which the offence was committed, or to engage in a commercial or industrial activity, to direct, administer, manage or control in any capacity whatsoever, directly or indirectly, on their own behalf or on behalf of others, a commercial or industrial undertaking or a commercial company for

o requiring or receiving from the consumer, directly or indirectly, any payment or an undertaking to pay, in any capacity and in any form whatsoever, before the expiry of the withdrawal periods required for timeshare, exchange and long-term holiday contracts (article L. 242- 31 CC implementing Directive 2008/122 (Timeshare));

o charging the consumer exercising his right of withdrawal any costs, including costs pertaining to any services provided before the exercise of his right of withdrawal (article L. 242-31 CC implementing Directive 2008/122 (Timeshare));

o breach of provisions on misleading commercial practices (article L. 132-3 CC implementing Directive 2005/29 (Unfair Commercial Practices));

o breach of the provisions on comparative advertising (article L. 132 -25 CC implementing Directive 2006/114 (Misleading and Comparative Advertising));

o breach of the provisions on contracts concluded at a distance or off-premises (article L. 242-8 CC implementing Directive 2011/83 (Consumer Rights));

o aggressive commercial practices (article L. 132-12 CC implementing Directive 2005/29 (Unfair Commercial Practices)).

Additional sanctions specific to legal entities. (Art. 131-39, 2° to 9° of the French Criminal Code)

Prohibition from carrying out, directly or indirectly, one or more professional or social activities, either permanently or for a period of up to five years

Placement, for a maximum period of five years, under judicial supervision

Shut down (permanently or for a period of up to five years) of the establishment or of one or more of the establishments of the undertaking used to commit the offences

Exclusion from public contracts on a definitive basis or for a period of up to five years

Prohibition, on a definitive basis or for a period of up to five years, from making an offer to the public of financial securities or from having its financial securities admitted to trading in a regulated market

Prohibition, for a period of up to five years, from issuing checks other than those which allow the withdrawal of funds by the drawer from the drawee or those that are certified or from using payment cards

Confiscation of the property having served or being destined to commit the offence, which belongs to the convicted person (in order to ensure effectiveness of this confiscation the French Criminal Procedure Code allows for conservatory measures applicable to the property suspected of being destined to commit the offence)

Display or dissemination of the decision by the written press or by any means of communication to the public by electronic means

For

o requiring or receiving from the consumer, directly or indirectly, any payment or and undertaking to pay, in any capacity and in any form whatsoever, before the expiry of the withdrawal periods required for timeshare, exchange and long-term holiday contracts (implementing Directive 2008/122 (Timeshare));

o charging the consumer exercising his right of withdrawal any costs, including costs pertaining to any services provided before the exercise of his right of withdrawal (article L. 242-31 CC implementing Directive 2008/122 (Timeshare));

o misleading commercial practices (articles L. 132-3 and L. 132-4 CC implementing Directive 2005/29 (Unfair Commercial Practices));

o breach of the provisions on comparative advertising (article L. 132 -25 CC implementing Directive 2006/114 (Misleading and Comparative Advertising));

o breach of the provisions on contracts concluded off-premises (article L. 242-8 CC implementing Directive 2011/83 (Consumer Rights));

o aggressive commercial practices (article L. 132-12 CC implementing Directive 2005/29 (Unfair Commercial Practices)).

Repeat offenses.

When an individual has already been definitively convicted for a felony (délit) and commits, within a five-year period from the expiration of the first penalty or the date when it became time-barred, the same felony or a felony for which the same rules apply in respect of repeat offences, the maximum imprisonment and fine penalty is doubled.

The maximum fine applicable to legal persons is doubled when:

o a legal person, already permanently convicted of a crime or a felony for which a natural person would incur a fine of up to EUR 100,000, commits:

within a period of ten years from the date of expiration of the first penalty or the date when it became time-barred, a felony punishable by the same penalty, or within a period of five years from the date of expiration of the first penalty or the date when it became time-barred, a felony for which a natural person would incur a fine of more than EUR 15,000.

o a legal person, already definitively convicted for a felony (délit) and commits, within a five-year period from the expiration of the first penalty or the date when it became time-barred, the same felony or a felony for which the same rules apply in respect of repeat offences.

Destination of Fines

Fines are paid to the public treasury. There is not national legislation determining the purposes to which criminal fines are dedicated.

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

Administrative fine of up to EUR 3,000 for natural persons or up to EUR 15,000 for legal entities for

o breaching the provisions on package travel (article L. 211-23 of the Tourism Code implementing Directive 90/314 (Package travel));

o breaching the provisions on commercial warranty and after-sales service (articles L. 241-6 and L. 241-7 CC implementing Directive 1999/44 (Consumer Sales and Guarantees));

o having included unfair terms in a consumer contract (article L. 241-2 implementing Directive 93/13 (Unfair Contract Terms));

o breaching the obligation of information applicable to distance and off-premises contracts (article L. 242-10 CC implementing Directive 2011/83 (Consumer Rights));

o breaching the obligation of confirmation of the contract and, as the case may be, the medium chosen by the consumer (article L. 242-11 CC implementing Directive 2011/83 CC (Consumer Rights));

o breaching the provisions on phone marketing (article L. 242 -13 CC implementing Directive 2011/83 (Consumer Rights));

o breaching the prohibition of masked numbers in phone marketing provided for in article L. 221-17 CC (article L. 242-13 CC implementing Directive 2011/83 (Consumer Rights)).

Administrative fine of up to EUR 15,000 for natural persons and EUR 75,000 for legal entities breaching the provisions on the conditions of the rights of withdrawal applicable to distance and off-premises contracts (article L. 242-13 CC implementing Directive 2011/83 (Consumer Rights)).

Fines are paid to the public treasury. There is no national legislation determining the purposes to which criminal fines are dedicated.

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

In France, court decisions only produce effect between the parties and will not affect any contracts concluded or settlements reached by third parties. If a consumer or competitor has not been party to the legal proceedings, they will have to make a separate claim.

Associations or entities listed in article L. 621-7 CC (i.e. registered consumer associations including those listed in the Official Journal of the EU) may request the deletion of an unlawful or unfair clause from any contract or any type of contract offered or destined to the consumer or any contract in the course of being performed by the same professional. In such case, the court may order the professional to inform, at its own cost, all concerned consumers (article L. 621-8 CC). Finally, an administrative order and/or a court decision may support a claim based on the same breach, by the professional, of his legal and regulatory obligations.

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

As noted above, a consumer has several options for bringing a case before a civil or criminal court to claim damages, including through collective actions initiated by an approved association.

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

Publication and dissemination of the sanction is regarded as a sanction in itself. For more details, see sections on administrative and criminal sanctions.

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

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

The Audiovisual Superior Council ("Conseil supérieur de l'audiovisuel") is a regulatory authority whose mission is to verify compliance by audiovisual broadcasters with French law. It can order sanctions such as a fine or a prohibition to broadcast.

Further information may be found at: <http://www.csa.fr/Le-CSA/Presentation- du-Conseil>

The Authority for professional regulation of advertising ("Autorité de Régulation Professionnelle de la publicité") is tasked with examining the content of advertising, regardless of the medium used, striking a balance between freedom of expression and consumer law. It is managed by representatives of advertisement professionals. It issues opinions on compliance of advertising with its ethics rules. Although it cannot impose sanctions, its opinions are highly recognised by courts.

Further information may be found at: [http://www.arpp.org/qui-sommes- nous/roles-et-missions/#toc\\_01490805578836](http://www.arpp.org/qui-sommes- nous/roles-et-missions/#toc_01490805578836)

**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)?**

Pursuant to the European Directive 2013/11 dated 21 May 2013, conciliation and mediation are now well-incorporated principles under French law, often used in consumer litigation. In practice, consumer claims are generally brought before the Tribunal d'instance in an attempt to reach an amicable solution between the parties.

Note that civil procedure rules impose that before resorting to a court action, a claimant must first attempt to find an amicable resolution of the dispute (article 56 of the Civil Procedure Code).

There are several mediating services that may deal with aspects of the Directives; the most notable being the Commission for Consumer Mediation created by the Order of 20 August 2015.

The Paris Commission for Mediation and Arbitration maintains an up-to-date list of mediators who may be selected, among others, in cases of consumer disputes.

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