

I. ADMINISTRATIVE ENFORCEMENT

Which administrative mechanisms are available to enforce the Directives?

In Denmark, Directives 2006/114/EC, 98/6/EC, 1999/44/EC (partially), 93/13/EEC (partially) and 2005/29/EC are implemented in the Marketing Practices Act no. 1696 of 14 December 2017 and Executive Order, which is issued pursuant to the Marketing Practices Act. According to Section 25(1) of the Marketing Practices Act no. 426 of 3 May 2017, the Consumer Ombudsman oversees that businesses comply with the Marketing Practices Act as well as the Executive Orders issued pursuant to the Marketing Practices Act. General information on the Consumer Ombudsman can be found here: <http://www.consumerombudsman.dk/> (English)

<http://www.forbrugerombudsmanden.dk/> (Danish)

Directive 1999/44/EC (partially) is implemented in the Sale of Goods Act. Directive 2011/83/EU is implemented in the Consumer Contracts Act. The Consumer Complaints Board is authorised to handle certain disputes between consumers and traders. A consumer seeking to bring a case before the Consumer Complaints Board must first initiate a conciliation procedure before the Centre for Complaint Resolution (Centre for Klageløsning). Directive (EU) 2015/2302 is implemented in The Package Travel and Linked Travel Arrangements Act no. 666 of 26 December 2017. The Travel Industry Complaints Board is authorised to adjudicate disputes between consumers and traders that concern package travels. Directive 2009/22 is implemented in the Act on Injunctions for the Protection of Consumer Interests no. 1257 of 20 December 2000. This Act authorises approved foreign consumer protection institutions and the authorised Danish administrative institutions to file for an injunction against a trader for the protection of the collective interests of consumers. Directive 2008/122/EC is implemented in Consumer Contracts on the right of use to accommodation through timeshare, longer-lasting holiday products etc., no. 102 of 15 February 2011. The Consumer Ombudsman oversees that businesses comply with this Act.

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

Pursuant to Section 1 of Executive Order no. 1249 of 25 November 2014, anyone can file a complaint with the Consumer Ombudsman. This provision also gives the Consumer Ombudsman the authority to initiate investigations ex officio.

Only consumers can bring a case before the Travel Industry Complaints Board, the Consumer Complaints Board and the Centre for Complaint Resolution (Centre for Klageløsning). Investigations cannot be initiated ex officio.

Do any specific procedural requirements apply to filing administrative complaints?

There are no statutory, procedural requirements for submitting a complaint to the Consumer Ombudsman. Nevertheless, the complainant needs to provide the Consumer Ombudsman with some personal information, e.g., name and phone number, in order to file a complaint.

Danish speakers are encouraged to use the digital contact form, which can be accessed via this link: <https://indberet.kfst.dk/1-1-fo-klageformular/>

In order to submit a complaint through the form, the complainant is required to log in using the national digital ID called "NemID".

Non-Danish speakers can file a complaint by sending an e-mail. More information on the procedure can be found here: <http://www.consumerombudsman.dk/About-us/complaint-procedure>

Information on how to file a complaint with the Travel Industry Consumer Complaints Board can be found here:

<https://www.pakkerejseankenaevnet.dk/rejsekunde/hvordan-klager-du/>

Information on how to file a complaint with the Consumer Complaints Board can be found here: <https://www.forbrug.dk/klagemuligheder/?rn=43132> in addition to <https://kpo.naevneneshus.dk/Public/Home/ChooseLoginProvider?returnUrl=https://kpo.naevneneshus.dk/External>

Complaints with the Travel Industry Complaints Board, the Consumer Complaints Board, the Centre for Complaint Resolution (Centre for Klageløsning) and other administrative boards with the authority to handle consumer complaints can be submitted by using the centralised complaint system, which can be accessed here: <http://www.forbrug.dk/Klagemuligheder/Klager-over-koeb-i-Danmark/Klag-online>

Filing a complaint is usually subject to a fee.

In order to submit a complaint to the Consumer Complaints Board, the consumer must first attempt to resolve the dispute through mediation at the Centre for Complaint Resolution (Centre for Klageløsning).

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

According to Section 1 of Executive Order no. 1249 of 25 November 2014, the Consumer Ombudsman is not obligated to investigate any complaints.

Reports and other publications made by the Consumer Ombudsman can be accessed here: <http://www.forbrugerombudsmanden.dk/Menu/rapporterpublikationer>

According to Section 16 of the Consumer Complaints Act no. 524 of 29 April 2015:

a) The administrative boards are required to dismiss a complaint if the board is not competent to handle the complaint or if the complaint is being or has been adjudicated by another competent authority or court.

b) The administrative boards may dismiss a complaint if 1) the consumer has not given notice to the trader, 2) the complaint is frivolous or unnecessary, 3) the price of the product or service is either too high or too low, 4) the matter is not suited for being handled by the administrative body or 5) admitting the complaint would severely jeopardise the functioning of the board.

Yearly reports of the Travel Industry Complaints Board can be found here: <https://www.pakkerejseankenaevnet.dk/om-os/aarsberetning/>

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

According to Section 25(2) of the Marketing Practices Act, the Consumer Ombudsman can demand all information deemed necessary for the operations of the Consumer Ombudsman furnished by traders.

According to Section 13 of the Marketing Practices Act, the trader must be able to document the accuracy of statements regarding factual circumstances. There are no specific requirements for the provision of evidence to the Travel Industry Complaints Board or the Consumer Complaints Board.

II. ENFORCEMENT THROUGH COURT ACTION

Which court actions are available to enforce the Directives?

Generally, the competent district court or its enforcement division (the bailiff's court - "fogedretten"), will have jurisdiction over the case, depending on the type of action sought.

According to Section 24(1) of the Marketing Practices Act, actions in violation of the Act can be prohibited by judgement (injunction). Moreover, it is possible to impose orders that are deemed necessary for ensuring compliance with the injunction or re-establishment of the state prior to the violation.

It is also possible for a wronged party to seek damages (Section 24(2)) or compensation (Section 24(3)).

Who can start a court action?

Generally, anyone with a so-called legal interest in a matter can bring an action in accordance with the general procedural rules of Danish law.

According to Section 32(1) of the Marketing Practices Act, anyone with a legal interest therein may bring a case for injunctions, orders, damages and compensation under Section 24.

The Consumer Ombudsman can bring an action for an injunction or an order deemed necessary to ensure compliance with an injunction.

Upon request, the Consumer Ombudsman is authorised to file a lawsuit seeking damages or compensation on behalf of a consumer.

According to Section 34 of the Marketing Practices Act, upon request, the Consumer Ombudsman may include multiple, similar claims in one action. Moreover, pursuant to Section 35 of the Marketing Practices Act, the Consumer Ombudsman can act as a representative in a class-action lawsuit.

Pursuant to Section 3(1) of the Act on Injunctions for the Protection of Consumer Interests, foreign consumer protection institutions (Section 2) and the authorised Danish administrative institutions (Section 4(1)) may file for an injunction against a trader for the protection of the collective interests of consumers. According to Section 35(2) of the Consumer Complaints Act, the Competition and Consumer Authority may bring an action on behalf of a consumer against a trader that has failed to comply with a ruling by an administrative board or a settlement.

Pursuant to Section 124(3) of the Administration of Justice Act, associations, interest organisations and the like may try cases within their sphere of interest on behalf of their members.

According to Section 3(1) of Executive Order no. 1249 of 25 November 2014, the Consumer Ombudsman may (in accordance with the general rules of procedure of the Administration of Justice Act) intervene in or file a lawsuit, including cases concerning consumer protection laws, when the matter falls within the purview of the Consumer Ombudsman.

The Consumer Ombudsman may decide to bring criminal charges for violation of the Marketing Practices Act and prosecute the case as well in accordance with Section 32(6) of the Marketing Practices Act.

Similar claims may be brought as a class-action lawsuit in accordance with the rules of Chapter 23a of the Administration of Justice Act no. 1445 of 29 September 2020.

Can court actions be initiated by competitors?

Yes, provided they have a legal interest in the action.

Can the case be handled through an accelerated procedure?

It is possible to obtain a temporary injunction to restrain the breach. A case regarding an injunction on this matter is handled through the regular procedure in the Danish Administration of Justice Act Chapter 40.

The small claims procedure is a simplified and expedited legal procedure available in cases before the district courts for claims with a value of no more than DKK 50.000 or if the trader and the consumer agree to use the procedure after the dispute has arisen.

The small claims case is processed in accordance with the procedural rules of Chapter 39 of the Administration of Justice Act, which inter alia means that the admission of evidence is subject to increased scrutiny. The court will handle the preparation of the case after the defendant has responded to the allegations of the plaintiff and the court may set deadlines.

The parties can choose to use special forms for their submissions. The forms can be found here: <http://www.domstol.dk/SELVBETJENING/BLANKETTER/STAEVNINGOGSVARSKRIFT/Pages/default.aspx>

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

In general, the provision of evidence regarding the ordinary court actions are no different from other civil or penal cases. One should however pay attention to the provisions in the Danish Marketing Act Sections 13 and 25(2) regarding the trader's duty to submit documentation and information regarding their behaviour in the market. Section 13 furthermore states that the trader must be able to prove the accuracy of any claims or statements made during the marketing. The burden of proof regarding information and documentation thereby lies on the trader.

Are there specific procedural reliefs for consumers or consumer associations?

Pursuant to Section 36 of the Consumer Complaints Act, the Competition and Consumer Authority may decide to cover the court expenses incurred by a consumer in the first instance court, when the action is brought by the consumer with the intention of enforcing a decision by an administrative board or a settlement or by the trader with the intention of having the decision or settlement overturned. According to Section 37, the Competition and Consumer Authority may also decide to let the national treasury cover any expenses not covered by a legal expenses insurance.

III. SANCTIONS

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

According to Section 24(1) of the Marketing Practices Act, actions in violation of the Act can be prohibited by judgement (injunction). Moreover, it is possible to impose orders that are deemed necessary for ensuring compliance with the injunction, including that any contract entered into in violation of the order is void, or re-establishment of the state prior to the violation.

It is also possible for a wronged party to seek damages (Section 24(2)) or compensation (Section 24(3)).

Damages for other infringements can be awarded in accordance with the general principles of Danish tort law or general principles of the Danish law of obligations.

Contracts or contractual clauses entered into in violation of the Directives in scope and the implementation laws, particularly Directive 2005/29 and the Marketing Practices Act, or as a result of such a violation, may be voidable pursuant to the Contracts Act, especially Section 38(c), or general rules of Danish contract law. Alternatively, the contract might be terminated pursuant to the Sale of Goods Act or general principles of the Danish law of obligations.

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

Criminal sanctions can only be imposed by the courts. In practice, however, the Consumer Ombudsman, who is in charge of overseeing that businesses comply with the Marketing Practices Act and other consumer protection laws, files a police report containing a recommendation as to the size of the fine.

In accordance with Section 37(1) of the Marketing Practices Act, failure to comply with a court order or an order issued by the Consumer Ombudsman pursuant to Sections 28(2), 32(2) or 33 of the Marketing Practices Act is punishable by a fine or a maximum of 4 months' imprisonment.

According to Section 37(2) of the Marketing Practices Act, failure to provide information requested pursuant to Sections 25(2) or 27(3)(2) or providing the Consumer Ombudsman with false or misleading information is punishable by a fine.

Pursuant to Section 37(3) of the Marketing Practices Act, violation of Section 5(1), Section 6(1), Section 6(3), Section 6(4), Section 7, Sections 9- 11, Section 14(1), Section 15, Section 16(1), Section 18, Section 19, Section 20(1) and Section 21 and intentional violation of Section 22 is punished with a fine.

As a starting point, the Consumer Ombudsman bases its recommendation as to the size of the fine for violations of the Marketing Practices Act on what the trader gained or expected to gain from the illegal activity. However, in cases where this is too difficult to establish in practice, the recommendation is based on the marketing costs.

Pursuant to Section 41(1) of the Package Travel Act, violation of Section 6, 10 and 12 is punished with a fine. The same applies to gross or repeated violations of Sections 9 and 18(2).

Pursuant to Section 18 of the Timeshare Act, violation of Section 6 is punished by a fine. The same applies to repeated or gross violations of Sections 5, 7(1)(3), 8(2), 14 and 16(1)(3).

Pursuant to Section 34 of the Consumer Contracts Act, violation of Section 4(1), 8(1) no. 9, 14(1) no. 10 and 28(3) by a trader is punished by a fine. The same applies to gross or repeated violations of Section 14(1) no. 11, 14(2) cf. 14(1) no. 11 and 15(1) cf. 14(1) no. 11.

The size of the fine may be influenced by 1) the gravity of the violation, 2) if there have been repeated violations and if so the frequency of these, 3) failure to comply with an order to remedy the violation within a set deadline, 4) the duration of the violation, 5) the level of cooperation, 6) the number of sales of the goods covered by the violation, 7) the number of consumers affected and 8) failure to heed a warning from the Consumer Ombudsman.

There are no statutory maximum or minimum size of the fines imposed.

There is no statutory difference between the sizes of the fines imposed based on whether it is a natural or legal person.

All fines are paid to the national treasury and are not statutorily earmarked for any particular purpose.

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

According to Section 2 of Executive Order no. 1249 of 25 November 2014, the Consumer Ombudsman is required to inform the public of cases and decisions of public interest. Occasionally, press releases about investigations, cases and publicised decisions include the name of the trader in question. The decision of whether to publicise the name of the trader or not is based on a balancing of interests.

The decisions of the Consumer Ombudsman are usually published here: <http://www.forbrugerombudsmanden.dk/Sager>

According to Section 38 of the Marketing Practices Act, The Consumer Ombudsman is authorised to settle violations of the Marketing Practices Act and the Executive Orders issued pursuant to the Act with a fixed-penalty notice in certain limited cases.

Pursuant to Section 32(2) of the Marketing Practices Act, the Consumer Ombudsman can impose an order if 1) the action is in obvious violation of the law and 2) the action cannot be changed through negotiation.

The Consumer Ombudsman can impose a temporary injunction in accordance with Section 36(1) of the Marketing Practices Act, if the purpose of a motion for an injunction pursuant to Section 24(1) would be lost if it were to await the court's decision.

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

Seeing as a judicial decision only produces effects between the parties to the procedure, the individual transaction will not be immediately affected by an administrative order or a judgement. Nevertheless, a decision that concludes that the practice is in violation of the implementation laws (and the Directives) will provide a solid foundation for a consumer seeking to have the contract voided as contracts in violation of the implementation laws may be declared null and void pursuant to the Contracts Act, especially Section 38(c) of the Act. The same applies to consumers seeking to terminate the contract pursuant to the substantive rules of the Sale of Goods Act or the other implementation laws.

However, orders or injunctions issued pursuant to Section 24 of the Marketing Practices Act may affect contracts (or contractual terms) that are in violation of the order or injunction. Inter alia, contracts entered into in violation of such an order or injunction may be declared void in accordance with Section 24(1)(1).

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

According to Section 24(1) of the Marketing Practices Act, it is possible to impose orders that are deemed necessary for ensuring compliance with an injunction or re-establishment of the state prior to the violation, which may include reimbursement and restitution.

Damages and compensation can otherwise be awarded in accordance with the general rules of Danish law.

Any unjust enrichment might be taken into account by the courts when deciding on a matter.

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

According to Section 24(1) of the Marketing Practices Act, it is possible to impose orders that are deemed necessary for ensuring compliance with an injunction or re-establishment of the state prior to the violation, which may include ordering the issuance of a public (corrective) statement.

According to Section 2 of Executive Order no. 1249 of 25 November 2014, the Consumer Ombudsman is required to inform the public of cases and decisions of public interest. Occasionally, press releases about investigations, cases and publicised decisions include the name of the trader in question. The decision of whether to publicise the name of the trader or not is based on a balancing of interests.

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The Danish courts as well as the administrative authorities operate in accordance with a principle of judicial openness and free access to public records, which entails that the public generally has access to their decisions. Moreover, as the court system becomes increasingly digitalised, the public will have easier access to cases and decisions. Select judgements and rulings are published in excerpts on the courts' websites.

IV. OTHER TYPES OF ENFORCEMENT

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

According to Sections 28(1) and 29(1) of the Marketing Practices Act, the Consumer Ombudsman must first and foremost seek to solve matters through negotiation with the traders as well as with interest organisations. This practice, which often results in the issuance of guidelines, also has a pre-emptive scope. Moreover, the Consumer Ombudsman can provide a trader with a statement on the legality of intended marketing practices pursuant to Section 30. This statement is binding on the Consumer Ombudsman but not the courts.

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)?

According to Sections 28(1) and 29(1) of the Marketing Practices Act, the Consumer Ombudsman must first and foremost seek to resolve matters through negotiation with the traders as well as with interest organisations. This practice, which often results in the issuance of guidelines, also has a pre-emptive scope.

A promise made by a trader in the course of negotiations with the Consumer Ombudsman can be enforced by the Consumer Ombudsman by issuing an order pursuant to Section 28(2) of the Marketing Practices Act.

Moreover, the Consumer Ombudsman can provide a trader with a statement on the legality of intended marketing practices pursuant to Section 30. This statement is binding on the Consumer Ombudsman but not the courts.

Before a complaint can be submitted to the Consumer Complaints Board, there must have been an attempt to resolve the dispute through the Centre for Complaint Resolution (Centre for KlageLøsning). The Centre is an impartial mediator that facilitates a positive dialogue between the parties. The Centre may provide impartial legal guidance and answer questions in general, but it cannot decide on the merits of the case or make a decision. More information can be found here: <https://www.forbrug.dk/klagemuligheder/?rn=43132> in addition to

<https://kpo.naevneneshus.dk/Public/Home/ChooseLoginProvider?returnUrl=https://kpo.naevneneshus.dk/External>

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