

I. ADMINISTRATIVE ENFORCEMENT

Which administrative mechanisms are available to enforce the Directives?

In Slovenia, Directives 90/314/EEG (Package Travel), 93/13/EEG (Unfair Contract Terms), 98/6/EEG (Price indication), 1999/44/EEG (Consumer Sales and Guarantees), 2008/122/EEG (Timeshare), 2009/22/EEG (Injunctions) and 2011/83/EU (Consumer Rights) are implemented by the Consumer Protection Act. The general administrative enforcement authority for the Act is the Market Inspectorate (Tržni inšpektorat; ("MI"), which is part of the Ministry of Economic Development and Technology ("MEDT"). MI is competent to enforce provisions of the Directives ex officio and to hear administrative complaints. The general website of MI can be found in English and Slovene at: <https://www.gov.si/en/state-authorities/bodies-within-ministries/market-inspectorate/> In 2018, Slovenia adopted Zakon o spremembah in dopolnitvah Zakona o varstvu potrošnikov – ZVPot-H (Uradni list RS, št. 31/18) (Act Amending the Consumer Protection Act – Official journal RS, no. 31/18), which with Article 2 amended Article 1a, point 3 of Consumer Protection Act to read as follows: »3. Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and related travel arrangements, amending Regulation (EC) No 882/2004 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11.12.2015, p. 1; hereinafter: Directive (EU) 2015/2302);«. Conclusion: since 2018 the Directive 90/314/EEC is replaced with Directive EU 2015/2302 Directive 2005/29/EEG (Unfair Consumer Practice) is implemented by the Consumer Protection against Unfair Commercial Practices Act, which is also generally enforced by MI.

Both above-listed Acts allow other supervising authorities to enforce consumer protection provisions within their field of competence. In practice, however, other authorities represent only a small fraction of all proceedings for infringements of the provisions of the Directives.

Depending on the facts and subject to certain conditions in accordance with articles 71, 72, 72.a, 73, 77 and 78 of the Consumer Protection Act, MI has the authority to (i) fine the trader, (ii) order the trader to refund, replace or repair purchased faulty goods, (iii) issue an order to prevent further sales of goods until a breach has been fixed, (iv) issue an order for the trader to fulfil his legal obligations by refunding the consumer when he withdraws from the contract, or (v) issue an order to prevent (further) illegal advertisement.

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

Slovenian law does not pose any specific requirements on the initiator of the complaint proceedings, they can be initiated by any natural or legal person and do not require proof of legal interest. Investigations can be initiated ex officio. The MI website offers a possibility to report infringements of rights even anonymously at:

<http://www2.gov.si/mg/tirs/tirs.nsf/f1?OpenFrameSet&Frame=main&Src=/mg/tirs/tirs.nsf/0/838F0883B0BAFDC8C1256CC400393325?OpenDocument>

The MI website lists three registered consumers' representative organisations in Slovenia (registration is necessary to obtain the status of the representative organisation) which can also file administrative complaints on behalf of consumers: (i) Consumer Association of Slovenia (Zveza potrošnikov Slovenije), (ii) International Institute for Consumer Research (Mednarodni inštitut za potrošniške raziskave) and (iii) Association of Gorenjska Consumers Kranj (Združenje potrošnikov Gorenjske Kranj).

Do any specific procedural requirements apply to filing administrative complaints?

A complaint can be filed before the MI either by mail or phone to any of MI's 8 offices in the country or by filling out an online form (anonymously or with personal data). A complainant can also request a response from MI at: <http://www2.gov.si/mg/tirs/tirs.nsf/f1?OpenFrameSet&Frame=main&Src=/mg/tirs/tirs.nsf/0/838F0883B0BAFDC8C1256CC400393325?OpenDocument>

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

MI must process complaints and upon request inform the complainant of the results of the investigation.

MI publishes its yearly report at

http://www.ti.gov.si/si/zakonodaja_in_dokumenti/dokumenti/

In 2019, according to the provisions of the Consumer Protection Act, Market inspectors issued warnings in 1770 cases of violations of Consumer Protection Act (that is 43,8% of all warnings).

In 115 cases, the Consumer Protection Act violations led to the issuance of an administrative decision.

In 2042 cases, the Consumer Protection Act violations led to a warning under the Misdemeanors Act (47,8% of all warnings).

In 366 cases, a reprimand was issued for the violations of the Consumer Protection Act (35,8% of all issued reprimands). And in 28 cases, for the Consumer Protection Act violations the fine with payment was issued (13,1% of all).

According to the provisions of the Consumer Protection against Unfair Commercial Practices Act, Market inspectors performed 2227 inspections in 2019 (1912 inspections were performed in 2018). In doing so, they issued or pronounced:

- 33 administrative decisions (2018: 40);
- 377 warnings according to Inspection Act (2018: 380) (9,3% of all warnings);
- in 48 cases they imposed a fine for a misdemeanor (2018: 67), of which in 42 cases (2018: 65) with an issued decision and in 6 cases with a payment order (2018: 2)
- in 107 cases (2018: 116) inspectors issued a reprimand to violators (10,5% of all);
- in 381 cases (2018: 435) the inspectors issued a warning to violators under the Misdemeanor Act-1 (8,9% of all).

According to the MI's yearly report, traders most frequently breach provisions on the requirement to clearly mark prices of products.

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

The MI can only order the trader to refund, replace or repair purchased faulty goods if there is no dispute between the trader and consumer regarding the existence of such fault, if the consumer submits an expert opinion or if the consumer is able to prove the fault beyond doubt.

In case of investigation of an unfair commercial practice, the administrative authority may, with regard to other circumstances, order the trader to present proof of his/her statements. Failing to do so will result in his statements being considered untrue.

II. ENFORCEMENT THROUGH COURT ACTION

Which court actions are available to enforce the Directives?

In 2017, Slovenia adopted the new Collective Actions Act (slo. Zakon o kolektivnih tožbah; Uradni list RS, št. 55/17), which has repealed the entire Chapter 10 of the Consumer Protection Act (hence Articles 74 to 76). The Collective Actions Act regulates the so-called:

- a) 'collective action for damages' (Articles 26 to 46) and
- b) 'collective injunction' (Articles 47 to 50).

Articles 51 to 57 of the Collective Protection Act are related to specific rules for consumer protection.

Who can start a court action?

A general claim for civil damages can be initiated by anyone who suffers damages.

The filing of a collective action for injunction is without prejudice to an individual's right to bring an independent action before the competent court concerning the same conduct of the same company, requesting protection of his rights arising from the legal relationship with the company (Article 53 of the Collective Actions Act).

Following the new regulation in the Collective Actions Act:

- a) Article 4/1 provides, that the person entitled to file a collective action or a proposal for the confirmation of a collective settlement is a legal person governed by private law that carries out a non-profit-making activity and in which there is a direct link between its main objectives and the rights which are alleged to have been infringed and in respect of which an action is brought; or Senior Attorney General;
- b) Article 52 provides that notwithstanding the provision of Article 4 of the Collective Actions Act, a collective action for injunction may only be filed by an organisation that is a legal person established for the protection of the rights and interests of consumers, or by a chamber or business association of which the defendant company is a member.

Can court actions be initiated by competitors?

In a general claim for civil damages, competitors may have legal standing if they have suffered damage. This will be most relevant in certain illegal advertisement practices, which might also be contrary to competition law in addition to consumer protection law.

Can the case be handled through an accelerated procedure?

There are no special proceedings for consumer-related disputes under Slovenian law. Consumer law disputes are processed in regular civil litigation.

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

In case of investigation of an unfair commercial practice, the civil court may, with regard to other circumstances, order the trader to present proof of his/her statements. Failing to do so will result in these statements being considered untrue.

Are there specific procedural reliefs for consumers or consumer associations?

There are no special procedural reliefs for consumers or consumer associations under the Civil Procedure Act, the Consumer Protection Act or the Consumer Protection against Unfair Commercial Practices Act. The only procedural relief is provided by Regulation Brussels Ia (1215/2012), which allows the consumer to file a lawsuit against a trader from another Member State in the competent courts where the consumer is domiciled.

The district courts at the seat of the higher courts are competent to decide on collective actions and the proposal for the approval of collective settlements. In cases of collective proceedings where a single judge decides first, he/she may exceptionally propose to the President of the High Court that the case should be given to the panel of three judges if it is a complicated matter of legal or factual issues (Article 6 of the Collective Actions Act).

III. SANCTIONS

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

In a general claim for civil damages the court can award actual damages suffered by the plaintiff. As is the case with most civil procedures under Slovenian law, the court can also order coercive civil fines in order to ensure that the decision will be effectively complied with.

According to Article 21.b of the Consumer Protection Act, if the goods are not in conformity with the contract of sale, the consumer may request to have the goods brought into conformity. If the trader fails to do so within 45 days, the consumer may terminate the contract or demand a price reduction.

According to Article 37.c of the Consumer Protection Act, if the goods possess a material defect, in addition to damages, the consumer may request from the trader:

- to repair the defect;
- a partial refund, proportional to the defect;
- a replacement of goods; or
- a complete refund.

According to Article 38 of the Consumer Protection Act, if there is a defect in the provided service, the consumer may request from the trader:

- to repair the defect;
- a partial refund, proportional to the defect;
- to provide the service without the defect; or
- a complete refund.

The consumer may also terminate the contract:

- if the trader fails to deliver the goods in an appropriate timeframe and fails to deliver the goods even after he/she had been given a suitable extension by the consumer (Article 25.a of the Consumer Protection Act);
- if the contracts for the sale of goods on instalment credit terms does not include information on total price of all instalments, price per instalment, number and deadlines of instalments (Article 50 of the Consumer Protection Act).

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

There are no criminal sanctions specifically for infringements of the provisions of the Directives.

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

The MI can issue monetary fines for infringements of the provisions of the Directives:

According to Article 77 of the Consumer Protection Act, a fine of EUR 3,000 up to EUR 40,000 is imposed on the trader for severe infringements of any of the Directives except Directive 2005/29/ES (Unfair Consumer Practice) and a fine of EUR 1,200 up to EUR 4,000 is imposed on the responsible person.

According to Article 78 of the Consumer Protection Act, a fine of EUR 1,200 is imposed on the trader in case of minor infringements of any of the Directives except Directive 2005/29/ES (Unfair Consumer Practice) and a fine of EUR 400 is imposed on the responsible person.

According to Article 15 of the Consumer Protection against Unfair Commercial Practices Act, a fine of EUR 3,000 up to EUR 40,000 is imposed on the trader for infringements of the Directive 2005/29/ES (Unfair Consumer Practice), a fine of EUR 300 up to EUR 2,000 is imposed on the responsible person and a fine of EUR 1,200 up to EUR 15,000 is imposed on a trader, who is an individual practicing an activity.

These monetary fines are imposed by the MI and, upon appeal, reviewed by the court. In the case of infringements of Unfair Commercial Practices Act, the MI can only impose the minimum fine in the provided range. Only the courts may impose a higher fine than the minimum amount.

There are no specific criteria for infringements of Directives to determine the amount of a fine in an individual case. Instead, the general criteria from Article 26 of the Minor Offences Act needs to be taken into account. When determining the amount of a fine in an individual case, the relevant authority must consider the gravity of the offence and whether the offence was committed with intent or negligently. In addition, the authority must consider all circumstances affecting the amount of a fine, in particular the degree of responsibility, motive, the degree of endangerment or infringement, circumstances of the infringement, the perpetrator's personal conditions, the perpetrator's behaviour after the offence, and whether the perpetrator offered to compensate for damages. The authority should also take into account the perpetrator's financial position, their salary and other income, their wealth, and their obligations relating to their family. The amount of a fine may be reduced below the minimum prescribed amount when there are special mitigating circumstances.

Some of the monetary fines have a minimum and maximum amount, but they do not relate to the trader's turnover. There is no difference whether the trader is a natural or a legal person.

There are no specific provisions regulating to what the profits of monetary fines are allocated for infringements of the Directives. According to Article 17, paragraph 9 of Minor Offences Act, the profits go into the state budget.

In addition to monetary fines, the MI has the authority to (i) order the trader to refund, replace or repair purchased faulty goods, (ii) issue an order to prevent further sales of goods until a breach has been fixed, (iii) issue an order for the trader to fulfil his legal obligations by refunding the consumer when he withdraws from the contract, or (iv) issue an order to prevent (further) illegal advertisement, according to Articles 71, 72, 72.a, 73 of the Consumer Protection Act.

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

An administrative order to refund, replace or repair purchased faulty goods has direct impact on the consumer's individual contract since it is given in relation to an individual contract. Its scope is limited, however, to instances where there is no dispute regarding the existence of such fault or the consumer is able to prove it beyond doubt. Even then, the trader may challenge the order before the administrative court.

An administrative order for the trader to fulfil his legal obligations by immediately refunding the consumer upon withdrawing from the contract affects the contract by decreasing the chance that the consumer will have to turn to the court in order to receive the refund.

Other administrative orders have no influence on individual contracts.

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

The administrative authority can order the trader to refund, replace or repair purchased faulty goods if there is no dispute between the parties regarding the existence of the fault or the consumer is able to prove its existence beyond doubt.

The administrative authority can also order the trader to refund the consumer when the consumer withdraws from the contract.

The administrative authorities and courts do not have the power to order compensation to consumers in case of other infringements. The consumer is required to seek compensation by himself/herself.

The consumer is entitled to restitution of profits only in a general claim for civil damages, but not via an order of an administrative authority to the trader to comply with the law.

Payments to public purse are possible through fines and in case of a consumer's general claim for civil damages, to force the trader to comply with the judgement if he refuses to do so of his own accord.

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

Article 10 of the Collective Actions Act provides that the Supreme Court of the Republic of Slovenia maintains the register of collective actions. Everyone has the right to inspect this register free of charge (see also Article 38 of the Collective Actions Act). The register is available on this link: http://www.sodisce.si/sodni_postopki/javne_obravnav/kolektivne_tozbe/

The administrative authorities may publish their decision or its summary if they consider it necessary in order to protect the rights of others. The decision can be published in the trader's business premises, in the media or in another suitable way.

The publication costs are to be borne by the trader.

IV. OTHER TYPES OF ENFORCEMENT

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

As regards the enforcement of advertising regulations, there is the Slovenian Chamber of Advertisers (Slovenska oglaševalska zbornica; the "SCA"), which adopted Slovenian Advertisers' Codex. Within the SCA, the Advertisers' Tribunal (Oglaševalsko razsodišče; the "Tribunal") (i) decides on complaints regarding advertisements, (ii) gives advice regarding compliance with legislation before airing advertisements and (iii) gives opinions regarding compliance with legislation upon request of the MI or consumer organisations. The Tribunal does not have the power to impose sanctions, it only gives recommendations. The Tribunal's decisions can be found (in Slovene only) at: http://www.soz.si/oglasevalsko_razsodisce/arhiv-razsodb.

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)?

Out-of-court dispute settlement has been implemented in Slovenia with the Out-of-Court Resolution of Consumer Disputes Act. Out-of-court dispute settlement bodies in Slovenia are competent to decide on business-to-consumer disputes initiated by the consumer, except in the field of medical services and public services without economic interest.

The proceedings can only be initiated by the consumer and cannot be anonymous. Cooperation of the trader is voluntary, unless otherwise dictated by law or EU regulation.

The decision is binding for both parties if they were made aware of the consequences of a binding decision and they agreed to it in writing. The decision is however binding for the trader even without his written consent if he accepts the binding effect of the out-of-court dispute settlement body's jurisdiction in the disputed contract. A binding decision of the out-of-court dispute settlement body has the same power as a judgement of a court, meaning each of the parties can use the same legal methods to ensure compliance as they would in case of a judgement. A non-binding decision is considered a recommendation or a proposed solution to the dispute.

Traders are obliged to inform consumers of which out-of-court dispute settlement body they accept as competent if they choose one. If not, they are obliged to inform the consumer that they do not consider any out-of-court dispute settlement bodies competent. A breach of this requirement results in a fine of up to EUR 500.

According to information on the website of the Ministry of Economic Development and Technology, there are 12 registered out-of-court dispute settlement bodies operating in Slovenia:

European Centre for Dispute Resolution (Evropski center za reševanje sporov);

PERSVET Education LLC (PERSVET, izobraževanje, d.o.o.);

Bank Association of Slovenia (Združenje bank Slovenije);

Slovenian Insurance Association (Slovensko zavarovalno združenje);

Law Office Devetak and Partners LLC (Odvetniška pisarna Devetak in partnerji, d.o.o.);

Slovenian Investment Fund Association (Združenje družb za upravljanje investicijskih skladov);

Attorney Simona Goriup (Odvetnica Simona Goriup).

Slovenian Mediators Association (Društvo mediatorjev Slovenije)

Attorney Jurij Preložnik (Odvetnik Jurij Preložnik)

Attorney Bojan Lakožič (Odvetnik Bojan Lakožič)

Attorney Aleksander Petrovič (Odvetnik Aleksander Petrovič)

Attorney Nataša Mlakar Sukič (Odvetnica Nataša Mlakar Sukič)

The Association of Slovenian Banks had 45 requests of dispute settlement in 2020. Opinions of Association of Slovenian Banks are available at:

<https://www.zbs-giz.si/zdruzenje-bank.asp?StructureId=1283>

Slovenian Insurance Association had 222 requests of dispute settlement in 2019. Reports of the Slovenian Insurance Association are available at:

<https://www.zav-zdruzenje.si/izvensodno-resevanje-potrosniskih-sporov/>

European Centre for Dispute Resolution had 10 requests of the dispute settlement in year 2019. Reports of the European Centre for Dispute Resolution are available at: <http://www.ecdr.si/index.php?id=44>

PERSVET Education LLC had 579 2018-2019 requests of the dispute settlement in years 2018-2019. Reports are available at:

http://www.persvet.eu/file/PerSvet_IRPS_Porocilo%202019.pdf

Other out-of-court dispute settlement bodies have not had any requests for dispute settlement.

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