

Avalent>Õigusaktid ja kohtupraktika>Tarbijaõiguse andmebaas>a

Enforcement

HUNGARY

Enforcement  (108 Kb) 

I. ADMINISTRATIVE ENFORCEMENT

Which administrative mechanisms are available to enforce the Directives?

Generally, it is the duty of the Innovation and Technology Ministry (ITM) to uphold the various consumer protection laws. However, different aspects of consumer protection are handled by different government institutions. The ITM serves as the principal one of these, though some specific consumer protection functions are handled by the Pest County Government Office and the Budapest Capital Government Office. Furthermore, procedures can be initiated before individual regional Government Offices (CPA) in case of breach of the national laws implementing all the Directives in scope, except for Directive 2006/114/EC.

In case of infringements related to Directive 2005/29/EC, and to certain information obligations under Directive 2008/122/EC and Directive 2011/83/EU, a procedure may also be initiated before the Hungarian Competition Authority ("HCA") or the Central Bank of Hungary ("CBH") (§ 10 of Act XLVII of 2008 Act on Prohibition of Unfair Commercial Practices ("UCP Act")).

Procedure of the HCA: the HCA is entitled to act in connection with unfair commercial practices if the commercial practice is suitable for influencing the competition (unless such unfair commercial practice only relates to the label of the product, the instructions for use, the warranty voucher or the information obligation set out in § 7 (3) of the UCP Act).

Procedure of the CBH: the CBH is entitled to take action in connection with unfair commercial practices if such commercial practice is connected to the activity of the trader supervised by the CBH (i.e. financial institutions).

In case of infringements related to Directive 2006/114/EC, a procedure may be initiated before the HCA.

All authorities are required to publish a yearly report on their activities, which may be obtained here:

CPA: <http://fogyasztovedelem.kormany.hu/node/8019>

HCA: http://gvh.hu/gvh/orszagguylesi_beszamolok

ITM: <https://fogyasztovedelem.kormany.hu>

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

Any consumer or social bodies representing consumers' rights are entitled to take action in front of consumer protection authorities, as well as the competent bodies of other EEA countries (46(2) of Act CLV of 1997 on Consumer Protection ("Consumer Protection Act")).

Any person/entity is entitled to make an announcement or complaint to the HCA (§ 43/G of Act LVII of 1996 on Prohibition of Unfair Market Practices and Restriction of Competition ("Competition Act")).

Any natural or legal person is entitled to take action in front of the CBH, as well as the competent bodies of other EEA countries, and foreign financial supervisory authorities if their scope of duties is affected (§ 82 of Act CXXXIX of 2013 on the Central Bank of Hungary ("CBH Act")).

All authorities are entitled to initiate ex officio proceedings.

Do any specific procedural requirements apply to filing administrative complaints?

Complaints can be filed with the Government Offices in writing, orally or electronically through the digital client gateway operated by the Hungarian Government. In addition to the general requirements set out in Act CL of 2016 on General Rules of Administrative Procedure, the complaint must contain further information, such as the name and address of the infringing party and a short summary of the alleged infringement (§ 46/A of the Consumer Protection Act).

Complaints can be filed with the HCA following the complaint form published on the home page of the HCA (http://gvh.hu/szakmai_felhasznaloknak/urlapok/Tajekoztato_fogyasztos_uzleti_relam_bejel_urlap_ki.html).

Complaints can be filed with the CBH by mail, personally or electronically by using the complaint form published on the home page of CBH, but solely after being unsuccessful in trying to resolve the issue directly with the opposing party.

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

The authorities have an obligation to investigate the complaint provided that no reason for refusal of the complaint set out in the Act on General Rules of Administrative Procedure applies. The authorities are obliged to clear up the facts of the case to the extent necessary for passing a decision. (46, 62 of Act on General Rules of Administrative Procedure).

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

No.

II. ENFORCEMENT THROUGH COURT ACTION

Which court actions are available to enforce the Directives?

There are no specific court actions to enforce the Directives in scope. A general claim for civil damages can be filed before the civil courts.

Who can start a court action?

Any triable person can file a claim for civil damages if damage was caused by the trader's breach of any national law implementing the Directives in scope. The Consumer Protection Act establishes that the consumer protection authority, the social bodies representing consumers' interests, or the public prosecutor are entitled to initiate a lawsuit if an unlawful activity affects a large number of consumers or causes significant damage. The defeated party is

obliged to satisfy the claims of the customer as ordered in the judgement. In its judgement, the court may entitle the prevailing party to publish the judgement in a national daily paper at the cost of the defeated party. (§ 38-39 of the Consumer Protection Act)

The CBH has similar rights in case of infringements committed in connection with activities that are supervised by the CBH. (§ 164 of the CBH Act)

Can court actions be initiated by competitors?

Yes, if damage was caused by the infringing activity to the competitor, theoretically it may initiate a court action against the infringing party. However, in practice, the party initiating such action would most probably face significant problems regarding evidence in front of the court.

Can the case be handled through an accelerated a procedure?

No.

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

No, there are no specific provisions in this regard.

Are there specific procedural reliefs for consumers or consumer associations?

There are no specific procedural reliefs for consumers. Consumers - as natural persons - may benefit from various procedural duty or cost retentions or exemptions and/or from statutory legal aid pursuant to the general procedural laws.

Social bodies representing consumers' interests that are organised as associations are exempted from paying procedural duty by law (§ 5(1)(d) of Act XCIII of 1990 on duties).

III. SANCTIONS

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

The court might order the infringing party to pay compensation if damage was caused and this can be proved in the course of the court proceedings.

In case of court procedures initiated by the consumer protection authority, the social bodies representing consumers' interests, or the public prosecutor in connection with unlawful activities affecting a large number of consumers or causing significant damage, the following civil remedies may be sought:

a) the termination of the infringement and the prohibition of the infringer from any further violation of the law (§ 39(3)(a) of the Consumer Protection Act);

b) the termination of the injurious situation and the restoration of the previous state (§ 39(3)(b) of the Consumer Protection Act);

c) if, regarding the consumers affected by the infringement, the legal grounds for the claim and the amount of damages demanded, or the overall contents of the claim in the case of other claims, can be clearly established irrespective of the individual circumstances of the consumers affected by the infringement, the court may award such claims and order the infringer to satisfy these claims (§ 38(3) of the Consumer Protection Act);

d) if the conditions set out in point (c) above are not met, the court may declare the infringement covers all consumers indicated in the claim, and each consumer affected may file charges against the infringer, in which case the consumer is required to verify only the amount of damages and that the damage is the direct result of such infringement (§ 38(3) of the Consumer Protection Act);

e) the court may order the infringer to take measures to have a public notice published at its own cost (§ 38(6) of the Consumer Protection Act).

The remedies described in points (c)-(e) above may also be requested by the CBH in procedures initiated by the CBH (§ 164(1)-(6) of the CBH Act).

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

The related legal provisions do not apply specific criminal sanctions for the infringement of the national laws implementing the Directives in scope.

However, the operation of a trader infringing the UCP provisions might at the same time qualify as a criminal act of deception of consumers under § 417 (1)-(2) of the Criminal Code: Any person who conveys misleading information during a product presentation on the availability of special discounts or price reductions, or on the chance of winning is guilty of misdemeanour punishable by imprisonment not exceeding one year. Any person who before a large public states false facts, or true facts in a deceptive way, or provides deceptive information on any essential feature of the product for the purpose of promotion, or if it involves goods of substantial quantity or value, is guilty of misdemeanour punishable by imprisonment not exceeding two years.

Perpetration of the above criminal act may be established, and the above sanction may be inflicted on the defendant only in a criminal procedure and by a criminal court.

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

The CPA, the HCA and the CBH may generally impose the following administrative sanctions for any type of infringements in respect of which a procedure may be initiated before them:

The CPA is entitled to (i) order the cessation of the infringement of law, (ii) prohibit the unlawful behaviour, (iii) order the termination of the deficiencies and disparities discovered (iv) prohibit or set out certain conditions for the distribution or sale of the goods, (v) under certain circumstances order the temporary closure of the commercial establishment, (vi) seize objects as defined in accordance with the regulation on the sanctions of administrative misdemeanors, and destroy them at the cost of the infringer, (vii) impose an administrative fine. If there is no other effective solution available to curtail or prohibit an infringement covered by D. 2017/2394, the Budapest Capital Government Office specifically may enact a number of sanctions relating to online content, such as ordering the removal of the content, the restriction of access to the online interface, or the mandatory notification of consumers who access the interface. It may also order the service provider to remove the online interface or prohibit or restrict access to it. Finally, it may also order the domain hosts and registrars to remove a domain name. (§ 47(1)-(1a) of the Consumer Protection Act).

When deciding on the sanctions to be imposed, the following, in particular, shall be taken into account: (a) the gravity of the infringement, (b) the duration of the illegal conduct, (c) whether the infringing activity is carried out repeatedly, and (d) the gain achieved by the infringement. (§ 47(1) of the Consumer Protection Act)

The amount of the administrative fine may range between HUF 15,000 (approx. EUR 50) and

a) in case of business parties covered by the Accounting Act, other than those governed by the Act on Small and Medium-sized Enterprises and the Support Provided to Such Enterprises, whose annual net sales revenue is in excess of HUF 100,000,000 (approx. EUR 325,000) - 5 per cent of the annual net sales revenue, but a maximum of HUF 500,000,000 (approx. EUR 1,623,000), or maximum of HUF 2,000,000,000 (approx. EUR 6,489,000) if the infringement concerns the lives, health, physical integrity of a broad range of consumers, or if it results in substantial financial injury to a broad range of consumers;

b) in case of business entities not covered by point (a) - HUF 500,000 (approx. EUR 1,623), or up to five per cent of the annual net sales revenue of the business entity if the infringement concerns the lives, health, physical integrity of a broad range of consumers, or if it results in substantial financial injury to a broad range of consumers, or up to HUF 5,000,000 (approx. EUR 16,300) for business entities to whom the Accounting Act does not apply. (§ 47/C of the Consumer Protection Act)

c) For repeat infringers who are electronic trade services or services connected to the information society, the fine can range from 200 000 HUF, with maximums following above-established rules except that business parties not covered by point (a) have a default maximum of 2 000 000 HUF. (§ 47/C of the Consumer Protection Act)

The HCA is entitled to (i) establish the infringement of the law, (ii) order the cessation of the infringement of law, (iii) prohibit the unlawful behaviour, (iv) prescribe certain obligations (e.g., order the parties to enter into a contract), (v) order the publication of a statement of correction, (vi) impose an administrative fine. (§ 76 of the Competition Act)

The fine shall be a maximum of ten per cent of the business entity's net sales revenue, or the net sales revenue of the group of companies in which the company sanctioned is identified as a member, for the financial year preceding the year when the resolution was adopted. The fine imposed upon associations of companies shall be a maximum of ten per cent of the previous financial year's net sales revenue of the member companies. In case of joint business partners, the individual financial liability of single business entities can't exceed 10% of their net sales revenues of the previous year. (§ 78(1b) of the Competition Act)

When deciding on the amount of the fine, the following, in particular, shall be taken into account: (a) the gravity and duration of the infringement, (b) the advantage gained by such conduct, (c) the market position of the infringers, (d) the degree of responsibility and any cooperation in the investigation, and (e) repeated occurrence and frequency of the infringement. (§ 78(3) of the Competition Act)

The CBH is entitled to (i) order the infringing party to take necessary measures to comply with the law or to eliminate the discrepancies discovered, (ii) order the cessation of the infringement of law, (iii) prohibit the unlawful behaviour, (iv) order the termination of the deficiencies and disparities discovered, (v) ban or impose conditions on the activities of the infringer, or (vi) impose an administrative fine. (§ 88 of the CBH Act)

When deciding on the sanctions to be imposed, the following, in particular, shall be taken into account: (a) the gravity of the infringement or negligence, (b) the impact the act had on the persons and organisations supervised by the CBH, and also on their members and clients, (c) the risk caused by the infringement or negligence, the extent of damages and the gravity of violation of personality rights underlying a claim for restitution, and the inclination to mitigate damages, (d) cooperation with the CBH on the part of the persons responsible, (e) whether or not the person affected by the sanction has acted in good or bad faith, and the material gains acquired and the economic loss avoided by that person through the infringement or negligence, (f) the suppression of the data, facts and information on which the action is based, or the intention to do so, and (g) repeated occurrence and frequency of the infringement. (§ 75 (4)(a), (c) and (e)-(i) of the CBH Act).

The amount of the administrative fine may range between HUF 15,000 (approx. EUR 50) and

a) in case of business parties covered by the Accounting Act, whose annual net sales revenue is in excess of HUF 100,000,000 (approx. EUR 325,000) - 5 per cent of the annual net sales revenue, but a maximum of HUF 100,000,000 (approx. EUR 325,000), or maximum of HUF 2,000,000,000 (approx. EUR 6,489,000) if the infringement results in substantial financial injury to a broad range of consumers;

b) in case of business entities or persons not covered by point (a) - HUF 5000,000 (approx. EUR 16,230), or - if higher - up to ten per cent of the annual net sales revenue of the business entity if the infringement results in substantial financial injury to a broad range of consumers, or up to HUF 15,000,000 (approx. EUR 48,660) for business entities to whom the Accounting Act does not apply. (§ 89(1) of the CBH Act)

The CBH's revenues from fines may be used for:

- a) facilitating and supporting the training of economic and financial experts;
- b) facilitating and supporting economic, financial and interdisciplinary research projects;
- c) the reinforcement and spread of financial culture, improving financial awareness, and promoting these objectives, such as in particular for the development of the related training and research infrastructure;
- d) supporting foundations; and
- e) purposes related to charity. (§ 170(3) of the CBH Act)

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

Under certain circumstances, the court might establish, in accordance with the general provisions of civil law, that a consumer contract is null and void. Furthermore, on the basis of an effective administrative order or judgement, the complainant may file a request for compensation, in which case the order or judgement will constitute sufficient evidence to decide whether or not to award the compensation.

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

By means of court proceedings, or through collective actions (i.e., where the violation of consumer protection regulations by a person affects a wide range of - personally unknown - consumers whose general identity can be established relying on the circumstances of the infringement, the attorney general, the consumer protection authority or the associations for the protection of consumers' interests have the right to bring a so-called "civil action" to the court. (§ 38-39 of the Consumer Protection Act; please note that this type of action is not equivalent with the Anglo-Saxon "class action".)

The CBH has similar rights in case of infringements committed in connection with activities that are supervised by the CBH. (§ 164 of the CBH Act)

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

The administrative authorities and the courts publish their decisions.

IV. OTHER TYPES OF ENFORCEMENT

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

There are several self-regulatory organisations dealing with the Directives in scope. The most relevant organisations are:

Social organisations representing consumers' interests such as the National Association for Consumer Protection in Hungary (www.ofe.kozugyes.hu), which operates advisory offices and makes the reporting of complaints possible. The Association is entitled to initiate a lawsuit if the unlawful activity affects a large number of consumers or causes significant damage.

Self-Regulating Advertising Association (www.ort.hu), which examines advertisings and requests the advertisers to comply with the legal provisions if necessary. The Association also makes online reporting of complaint possible.

The Alliance of Hungarian Travel Agencies (<http://www.muisz.com>) is the self-regulatory body of Hungarian travel agencies. The Alliance adopted an ethical code which is binding on all members, and established an ethical committee which deals with consumer complaints.

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 Consumer Protection Act establishes the conciliation bodies which are entitled to act in connection with consumer disputes. The conciliation bodies aim for an out-of-court settlement of the dispute and effective enforcement of consumers' claims. However, their decision is binding on the trader only if the trader undertook to be bound by the decision. The conciliation bodies are professionally independent bodies operated by the commercial and industrial chambers. (§ 18 of the Consumer Protection Act)

A claim can be filed with the Media and Communications Commissioner if the activity of an electronic communications service provider or media service provider infringed or jeopardised the rights of a consumer. The Commissioner is obliged to investigate the complaints. The Commissioner might inform the consumer of its rights and remedies, request the service provider terminate the infringement or to take an action or make reports on the matter. (§ 139-142/A of Act CLXXXV of 2010 on Media Services and on the Mass Media)

The Financial Arbitration Board of the Central Bank of Hungary (FAB) shall attempt to reach a conciliation agreement in consumer disputes of a financial nature. The FAB deals with disputes between consumers on the one hand, and persons or organisations on the other hand that fall under the scope of the acts listed in § 39 of the CBH Act. In order to initiate proceedings at the FAB, the consumer needs to first turn to the opposing person or organisation to reach a peaceful settlement, and only in case of being unsuccessful can the consumer file a written complaint with the FAB. Finally, as to the actions the FAB is entitled to take, it may (i) effectuate a peaceful settlement between the parties, (ii) adopt a binding decision, or (iii) make a recommendation on the merits of the case. If an authorised person or organisation objects to the FAB's binding decision in a manner satisfying the CBH Act, then the procedure be a regular court procedure. (§ 96-122 of the CBH Act)

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