

I. ADMINISTRATIVE ENFORCEMENT

Which administrative mechanisms are available to enforce the Directives?

In Croatia, Directives 93/13 (Unfair Contract Terms), 98/6 (Price Indication), 1999/44 (Consumer Sales and Guarantees), 2005/29 (Unfair Commercial Practices), 2008/122 (Timeshare), and 2011/83 (Consumer Rights) are implemented by the Consumer Protection Act (Croatian: Zakon o zaštiti potrošača, Official gazette nos. 41/2014 and 110/2015 – hereinafter: “ZZP”). Mainly, Directive 1999/44 (Consumer Sales and Guarantees) is implemented in the Obligations Act (Croatian: Zakon o obveznim odnosima, Official gazette nos. 35/2005, 41/2008, 125/2011, 78/2015, 29/2018– hereinafter: “ZOO”). The competent authorities in regard to consumer protection, pursuant to Article 124 of ZZP, are the Croatian Parliament, the Croatian Government, the Ministry of Economy, Entrepreneurship and Crafts, the National Assembly for Consumer Protection, professional associations, associations for consumer protection, local self-government units and other public authorities. The general website of the Ministry of Economy, Entrepreneurship and Crafts, in regard to its consumer protection network, can be found at: <http://potrosac.mingo.hr/hr/potrosac/>

The Directive 90/314 (Package Travel Directive) was implemented in the ZOO. Now the new Directive 2015/2302 is implemented in the Act on Providing Services in Tourism (Croatian: Zakon o pružanju usluga u turizmu, Official gazette nos. 130/2017, 25/2019, 98/2019, 42/2020). The courts are responsible for the enforcement, unless the law explicitly provides for a different competent authority.

The Directive 2006/114 (Misleading and Comparative Advertising) is implemented in the Electronic Media Act (Croatian: Zakon o elektroničkim medijima, Official gazette nos. 153/2009, 84/2011, 94/2013 and 136/2013 – hereinafter: “ZoEM”). The competent authority in regard to enforcement is the Electronic Media Council (Croatian: Vijeće za elektroničke medije), which is a body of the Agency for Electronic Media (Croatian: Agencija za elektroničke medije – hereinafter: “AEM”). The general website of the Agency for Electronic Media can be found at: <http://www.e-mediji.hr/en/>

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

Complaints filed under ZZP can be filed by the consumer, i.e., any natural person who is entering into transactions or acting in the market for purposes which are outside that person’s trade, business, craft or profession. No investigations can be initiated ex officio.

Complaints in regard to ZOO are left to the courts.

Complaints in regard to the practice of providers of media services pursuant to the ZoEM may be filed by any citizen of the Republic of Croatia and shall be examined by the Electronic Media Council.

Do any specific procedural requirements apply to filing administrative complaints?

For complaints filed under ZZP, a consumer may deliver an objection in writing to the trader. The trader shall answer within 15 days of receiving the written objection. If the consumer is dissatisfied with the provided answer, the following actions could be taken:

a) if the consumer is a user of a public service, it may file a complaint to the advisory body of the public entity which is in charge of regulating the provision of public services; or to the advisory body of the local or regional self-government units which decide on public services matters; or to the committee responsible for consumer complaints of the trader which is a provider of a public service (the aforementioned advisory bodies and committee shall provide an answer to the consumer’s complaint within 30 days of receiving the complaint).

b) If the consumer is still dissatisfied with the answer provided, he/she can initiate a proceeding in front of the authority in charge of the oversight on the providers of public services, in accordance with the Croatian General Administrative Procedure Act (Croatian: Zakon o općem upravnom postupku, Official gazette no. 47/2009 – hereinafter: “ZUP”). The competent authority shall examine the consumer’s claims and take action with respect to its competence. The competent authority shall provide an answer to the consumer regarding the actions taken within 30 days of receiving the complaint. If the consumer is still dissatisfied with the actions taken, he/she may initiate an administrative dispute.

c) If the consumer is not a user of a public service, after the unsuccessful written objection, he/she may alert the Croatian Market Inspectorate (a body established under the Ministry of Economy, Entrepreneurship and Crafts) or proceed directly to initiation of the proceedings before the court.

Complaints in regard to the ZoEM are filed with the Electronic Media Council, which shall render a decision with the majority vote of its members. The decision is not appealable, however, the claimant may file a motion before the competent Administrative Court.

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

The advisory body of the public entity which is in charge of regulating the provision of public services, the advisory body of the local or regional self-government units which decide on public service matters, and the committee responsible for consumer complaints of the trader which is a provider of a public service have an obligation to examine and investigate the complaint filed by the consumer/user of public services and provide an answer in writing within 30 days of receiving the complaint.

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

No specific requirements related to the provision of evidence pursuant to ZZP and ZoEM.

II. ENFORCEMENT THROUGH COURT ACTION

Which court actions are available to enforce the Directives?

A general claim for damages pursuant to the Article 1045 of the Croatian Civil Obligations Act (ZOO). The consumer has a right to be awarded damages with regard to the general rules of liability for damages. If the trader does not provide for the repair or replacement of the object, the consumer has the right to request the termination of the contract or a price cut, and in any case has the right to be awarded damages.

According to ZZP, an action may be initiated in terms of protection collective consumer rights against a person whose actions are in contrast with the provisions stated in ZZP (collective redress action).

Who can start a court action?

In a general claim for civil damages, anyone who has suffered damage can initiate an action.

Any authorised entity or person has the right to initiate a proceeding in regard to the protection of the collective consumer rights against a person whose actions are in contrast with the provisions stated in ZZP.

The proceeding mentioned above may be initiated by authorised entities or persons who have a justified interest for the collective protection of consumers (i. e., consumer rights associations and government authorities competent for the protection of consumers).

The Government of the Republic of Croatia, upon proposal by the Minister of Economy, Entrepreneurship and Crafts, shall determine the entities or persons authorised to initiate the proceeding mentioned above before the competent court.

The trader needs to be warned beforehand in writing that, unless he ceases the unauthorised behaviour, a collective consumer rights proceeding will be initiated against them. The proceeding may not be initiated before the expiry of 14 days from the delivery of the warning.

The proceeding shall be governed by the rules stated in the Croatian Civil Procedure Act (Croatian: Zakon o parničnom postupku, Official gazette nos. 4 /1977, 36/1977, 36/1980, 6/1980, 69/1982, 43/1982, 58/1984, 74/1987, 57/1989, 20/1990, 27/1990, 35/1991 53/1991, 91/1992, 112/1999, 129/2000, 88 /2001, 117/2003, 88/2005, 2/2007, 96/2008, 84/2008, 123/2008, 57/2011, 25/2013, 89/2014 and 70/2019 – hereinafter: “ZZP”) and/or the Enforcement Act (Croatian: Ovršni zakon, Official gazette nos. 112/2012, 25/2013, 93/2014,55/2016, 55/2016, 73/2017 and 131/2020 – hereinafter: “OZ”), unless stated otherwise within ZZP.

Before initiating the proceeding, the parties may initiate mediation before the centres authorised to conduct mediation proceedings.

As regards the ZoEM, after the decision by the Electronic Media Council has been delivered, the claimant may initiate a proceeding in front of the Administrative Court, the claimant being any citizen of the Republic of Croatia.

Can court actions be initiated by competitors?

In a general claim for civil damages, competitors may have legal standing if they have suffered damage.

Pursuant to the Act on Impermissible Advertising (Croatian: Zakon o nedopuštenom oglašavanju, Official gazette no. 43/2009) associations and persons, determined by the Government of the Republic of Croatia as associations and persons with the justified interest for the collective protection of traders against misleading or impermissible advertising, may file a claim with the court requesting termination of misleading or impermissible comparative advertising.

Can the case be handled through an accelerated procedure?

The Act on Impermissible Advertising provides that the proceedings initiated before the court by traders (competitors) against misleading or impermissible advertising is a summary proceedings.

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

The general provisions for the provision of evidence to the court are provided in the Croatian Civil Procedure Act (ZZP). Each party shall indicate the facts and propose evidence on which his request is based or with which he challenges the claims and evidence of the other party.

Are there specific procedural reliefs for consumers or consumer associations?

The examined Acts do not contain any specific requirements regarding the procedural reliefs for consumers or consumer associations.

III. SANCTIONS

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

According to ZOO, the competent civil court can award damages as a result of the claim for damages. The compensation can be awarded for pure economic loss or loss of profit, and as equitable non-pecuniary damage.

In terms of the procedure stipulated in ZZP for the protection of the collective consumer rights, the competent court may order the publication of the judgement (in its entirety or part of it) if its publication may lessen or completely remove the damaging consequences of the breach of provisions of ZZP.

The court shall impose a monetary fine, upon request of the person or entity competent for filing the collective consumer rights motion, in the event that the defendant voluntarily fails to comply with the obligation arising from the court's judgement.

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

Misleading advertising is prescribed by the Criminal Act (Croatian: Kazneni zakon, Official gazette nos. 125/2011, 144/2012, 56/2015,61/2015, 101/2017, 118 /2018 and 126/2019 – hereinafter: “KZ”) as a criminal sanction for the infringement of the Directives' provisions. Pursuant to Article 255 of KZ, a person who, in the circulation of goods and services, indicates false or incomplete information which is vital for the stipulation of the contract and could mislead a reasonable consumer, shall be punished with imprisonment of up to 2 years.

Furthermore, the ZZP prescribes for misdemeanour sanctions regarding the trader – legal entity, which are sanctioned with a fine from HRK 10,000.00 to 100,000.00.

The responsible person , the legal person, shall be fined for the same misdemeanours with a fine ranging from HRK 10,000.00 to 15,000.00.

The trader – natural person shall be fined for the same misdemeanours with a fine ranging from HRK 5,000.00 to 15,000.00.

The responsible person within a public entity shall be fined with a monetary fine ranging from HRK 15,000.00 to 100,000.00 in the following cases:

The public entity in charge of providing public services to the consumer does not establish the advisory body in which the representative of the consumer protection association must be present; or if it renders decisions without consulting the advisory board; or if it renders the decisions in a non- transparent, not objective and discriminatory manner;

The local and regional self-government unit in charge of deciding in regard to the rights and obligations of the users of public services does not establish the advisory body in which the representative of the consumer protection association must be present; or if it operates on the local territory and renders decisions without consulting the advisory board; or if it renders the decisions in a non-transparent, not objective and discriminatory manner.

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

Croatian law which implements the respective Directives does not provide for administrative sanctions.

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

The procedure may be initiated by a consumer in the event that the signed contract is void, because the consumer has concluded the contract with a mistaken consent. The mistaken consent may originate from inter alia error, fraud or violence. The competent court may conclude that the trader has committed an infringement of a provision of ZOO and the consumer will be able to prove the origin of the mistaken consent. The contract will be declared void as a result.

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

Consumers have the possibility of filing a claim for civil damages. Such claim for damages is subject to the general rules provided in ZOO. In terms of the procedure prescribed by ZZZP, the court may order the trader to take any measures necessary for the removal of the damaging consequences which were a result of his illegal behaviour.

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

In terms of the procedure prescribed by ZZZP for the protection of the collective consumer rights, the competent court may order the publication of the judgement (in its entirety or part of it) if its publication may lessen or completely remove the damaging consequences of the breach of provisions of ZZZP.

IV. OTHER TYPES OF ENFORCEMENT

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

In the ZoEM, the Electronic Media Council is responsible regarding self-regulation and co-regulations for the implementation of ZoEM. Certain matters may be regulated through self-regulation or co-regulation with the intent to equalize their application in practice. Said regulation must be generally accepted by the main interest groups within the Republic of Croatia, must be approved by the Electronic Media Council and must ensure the efficient regulation of the determined provisions.

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)?

ZZZP provides for out-of-court motions to be filed with the Court of Honour at the Croatian Chamber of Economy (Croatian: Hrvatska gospodarska komora – hereinafter: "HGK") and with the Court of Honour at the Croatian Chamber of Trades and Crafts (Croatian: Hrvatska obrtnička komora – hereinafter: "HOK") or a proposal for mediation to the Mediation centres (in accordance with the Mediation Act (Croatian: Zakon o mirenju, Official gazette no. 18/2011)).

The proceeding before the Court of Honour at the HOK:

The Court's main competence with respect to consumer rights is in regard of breaches of commercial and business customs (e.g. failure to fulfil stipulated obligations, the sale of products or services of poor quality as products of good quality, inaccurate manner of billing for the provided service (price higher than noted, failure to issue invoice, etc.))

The Honour Court may impose sanctions ranging from warnings to the suspension of the craft practice for a period of up to 5 years

The Court's decisions and judgements are binding for the parties and are enforced by the secretary of the Honour Court

Before the first hearing, the secretary of the Court shall attempt a mediation procedure between the parties

The proceeding before the Court of Honour at the HGK:

The Court's main competence with respect to consumer rights is in regard of breaches of good business practice in the performance of economic activities and circulation of goods and services within the territory of the HGK that members of the chamber perform against consumers (e.g. the sale of products or services of poor quality as products of good quality, willful stipulation of obligations with no intention of fulfilling them, willful stipulation of unclear or incomplete contracts in the circulation of goods and services, false advertising that damages another commercial company or the consumer, etc.)

Before the first hearing, the secretary of the Court shall attempt a mediation procedure between the parties (if the parties reach an agreement, they stipulate a settlement which is then registered in the minutes of the hearing)

The Court shall render a judgement at the end of the hearing (if the dispute is not resolved amicably)

The Court may impose sanctions such as warnings, public warnings with publication at the HGK assembly session, or public warnings with publication in the press and on the website of HGK.

Last update: 19/07/2022

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