

I. ADMINISTRATIVE ENFORCEMENT

Which administrative mechanisms are available to enforce the Directives?

In Portugal, Directive 2011/83 (Consumer Rights) was implemented by Decree-Law No. 24/2014, of 14 February 2014 (Distance contracts and off-premises contracts), as amended by Law No. 47/2014, of 28 July 2014 and Decree-Law No. 78/2018, of 15 October. The competent authority to verify compliance with the provisions of Decree-Law No. 24/2014 and responsible for the investigation of the corresponding proceedings of administrative sanctions is the Food and Economic Safety Authority (Autoridade de Segurança Alimentar e Económica - hereinafter "ASAE"), pursuant to Article 30. The Inspector-General of ASAE is competent for imposing fines and ancillary sanctions established by such Decree-Law.

Directive 1999/44 (Consumer Sales and Guarantees) was implemented by Decree-Law No. 67/2003, of 8 April 2003 (Sale of consumer goods and associated guarantees) - as amended by Decree-Law no. 84/2008 of 21 May 2008 - Decree-Law No. 6-E/2021, of 15 January 2021 and by Decree-Law 9/2021, of 29 January 2021. The competent authority to verify compliance with the provisions of Decree-Law No. 67/2003 and responsible for the investigation of the proceedings of administrative sanctions established by Article 12-A is ASAE, pursuant to Article 12-C. The competent authority for imposing fines is the Commission for the Application of Sanctions on Economic and Advertising Matters (Comissão de Aplicação de Coimas em Matéria Económica e de Publicidade – CACMEP). By Decree-Law 126-C/2011, of 29 December 2011, CACMEP came to an end and its economic-related attributions were transferred to ASAE, while the advertising-related matters were transferred to the Direção-Geral do Consumidor – DGC.

Directive 2005/29 (Unfair Commercial Practices) was implemented by Decree-Law No. 57/2008, of 26 March 2008 (Unfair business-to-consumer commercial practices), as amended introduced by Decree No. 205/2015 of 23 September of 2015, and Decree-Law No. 330/90, of 23 October 1990 (Advertising Code). The competent authority for imposing precautionary measures established by Decree-Law No. 57/2008 is the ASAE or the regulatory authority of the area in which the unfair commercial practice occurs, pursuant to Article 19. Furthermore, the Bank of Portugal, the Portuguese Securities Market Commission and the Portuguese Insurance Institute are also competent authorities for such task, in case of unfair commercial practices within the scope of the corresponding financial sector. In case of unfair commercial practices in respect of advertising, the competent authority is the Consumer General Directorate. Moreover, owners of codes of conduct that provide for a higher level of consumer protection can also control the unfair commercial practices referred to in the Decree-Law, pursuant to Article 17.

Directive 98/6 (Price Indication) was implemented by Decree-Law No. 138/90, of 26 April 1990, as amended by Decree-Law No. 162/99, of 13 May of 1999 and by the Decree-Law No. 9/2021, of 29 January. The competent authority to verify compliance with the provisions of Decree-Law No. 138/90 and responsible for the investigation of the corresponding proceedings of administrative sanctions is the ASAE;

Directive 93/13 (Unfair Contract Terms) was implemented by Decree-Law No. 446/85, of 25 October 1985 as amended by Decree-Law No. 220/95 of 31 August of 1995, Decree-Law No. 249/99 of 07 June of 1999 and Decree-Law No. 323/2001 of 17 December of 2001.

Directive 2006/114 (Misleading and Comparative Advertising) was implemented by Decree-Law No. 330/90, of 23 October 1990, and Decree-Law No. 57/2008, of 26 March 2008. The competent authority for imposing precautionary measures established by Decree-Law No. 57/2008 is the ASAE or the regulatory authority of the area in which the unfair commercial practice occurs, pursuant to Article 19. Furthermore, the Bank of Portugal, the Portuguese Securities Market Commission and the Portuguese Insurance Institute are also competent authorities for such task, in case of unfair commercial practices within the scope of the corresponding financial sector. In case of unfair commercial practices in respect of advertising, the competent authority is the Consumer General Directorate. Moreover, owners of codes of conduct that provide for a higher level of consumer protection can also control the unfair commercial practices referred to in the Decree-Law, pursuant to Article 17.

Directive 2008/122 (Timeshare) was implemented by Decree-Law No. 275/93, of 5 August 1993, as amended by Decree-Law No. 275/93, of 5 August of 1993, which introduced changes to the legal framework on certain aspects of timeshare, long-term holiday product, resale and exchange contracts. The competent authority for the organisation and investigation of the proceedings of administrative sanctions established by Decree-Law No. 275/93 is the ASAE. The Inspector-General of the ASAE is competent for imposing fines and ancillary sanctions established by such Decree-Law.

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

Directive 2005/29: In accordance with Article 20 of Decree-Law No. 57/2008, any person, including competing traders, with a legitimate interest in opposing any unfair commercial practice as prohibited under the same Decree-Law, may bring the matter before the relevant administrative authority, using, for such purpose, any means at its disposal. Nevertheless, this provision is without prejudice to Article 16, which means investigations can be initiated ex officio.

Directive 2006/114: In accordance with Article 20 of Decree-Law No. 57/2008, any person, including competing traders, with a legitimate interest in opposing any unfair commercial practice as prohibited under the same Decree-Law, may bring the matter before the relevant administrative authority, using, for such purpose, any means at its disposal. Nevertheless, this provision is without prejudice of Article 16, which means investigations can be initiated ex officio.

There are no special rules regarding Directives 2011/83, 1999/44, 98/6, 93/13 and 2008/122.

Do any specific procedural requirements apply to filing administrative complaints?

The statutes that implement the Directives in scope do not contain any specific procedural requirements regarding the filing of administrative complaints. Contrarily, it sets forth that any potential unfair commercial practice may be brought to the attention of the relevant administrative authority by any means at the parties' disposal. In accordance with information available on the ASAE website (<http://www.asae.pt>), the common practice is that the interested parties shall contact the relevant authority via email, fax, letter or telephone, disclosing and describing the facts they consider to be unfair commercial practices. For this purpose, forms are also available for download on ASAE's website.

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

Under Decree-Law No. 433/83, of 27 October 1982 – the Administrative Sanction's Act – administrative authorities shall take due account of all events or circumstances that may potentially trigger the application of administrative sanctions. Therefore, we conclude that under the applicable law, the authorities have an obligation to investigate the complaints filed.

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

Regarding Directives 2005/29 and 2006/114: Articles 19.4, 19.5 and 22 of Decree-Law No. 57/2008 set out the principles applicable to the provision of evidence to the competent authorities. In this context, the competent authorities, services and traders are required to cooperate with the administrative authorities in completing and carrying out their tasks. Moreover, the competent courts and administrative authorities can require traders to provide evidence of the material accuracy of the facts contained in the commercial practices regulated by this Decree-Law.

There are no special rules regarding Directives 2011/83, 1999/44, 98/6, 93/13, and 2008/122.

II. ENFORCEMENT THROUGH COURT ACTION

Which court actions are available to enforce the Directives?

Law No. 24/96, of 31 July 1996 (Consumer Protection Act) sets forth the injunction procedure (ação inibitória) for any harmful practice of the consumer's rights. The requirements for this special procedure are established by Articles 10 and 11 and by Law No. 25/2004, of 8 July 2004, which transposes Directive 98/27/EC on injunction procedure.

A general claim for civil damages under Article 483 of the Civil Code can be filed before the competent civil courts.

Regarding Directives 2005/29 and 2006/114, Article 16 of Decree-Law No. 57/2008 sets forth a «right of action» on the injunction procedure for the purpose of preventing, rectifying or putting a stop to a certain unfair commercial practice.

Regarding Directive 93/13, Article 25 of Decree-Law No. 446/85 sets forth the injunction procedure, for the purpose of prohibiting the use of certain general contractual terms. Article 33 sets forth a penalty payment, in a maximum amount of EUR 4.987,98, in case the defendant in the injunction procedure does not comply with the prohibition of using or recommending the use of general contractual terms that have been prohibited by the court.

There are no special rules regarding Directives 2011/83, 1999/44, 98/6, and 2008/122.

Who can start a court action?

Pursuant to Article 13 of the Consumer Protection Act, the following can start a court action: (a) directly harmed consumers, (b) consumers and consumers' associations pursuant to Law No. 83/95, of 31 August 1995 (Collective Legal Action) and (c) the Public Prosecutor and the Consumer General Directorate.

Regarding Directives 2005/29 and 2006/114, in accordance with Article 16 of Decree-Law No. 57/2008, any person – including competitor traders – with a legitimate interest in opposing unfair commercial practices may bring the matter before the courts.

Regarding Directive 93/13, in accordance with Article 26, the court action referred to in Article 25 of Decree-Law No. 446/85 may be brought by

- (i) Consumers' Associations with representativeness,
- (ii) trade unions, professional or financial interest associations, or
- (iii) the Public Prosecution, on its own motion, under request of the Ombudsman or properly a based request of an interested party.

There are no special rules regarding Directives 2011/83, 1999/44, 98/6, and 2008/122.

Can court actions be initiated by competitors?

Any competitor may file before the competent civil courts a general claim for civil damages as long as it fulfils the requirements established by Article 483 of the Civil Code.

Regarding Directives 2005/29 and 2006/114, court actions can be initiated by competitors when they prove to have a legitimate interest in opposing the relevant unfair commercial practice.

Regarding Directive 93/13, competitors are, in principle, excluded from initiating the court actions referred to in Article 25, as they can only be initiated by the entities referred to in Article 26 of Decree-Law No. 446/85, of 25 October 1985.

There are no special rules regarding Directives 2011/83, 1999/44, 98/6, and 2008/122.

Can the case be handled through an accelerated procedure?

The injunction procedure, as set out in the Consumer Protection Act, follows an accelerated procedure named «summary proceedings» (processo sumário);

Regarding Directive 93/13, whenever there is the risk of a contract being concluded including general contractual terms against the provisions of Decree-Law No. 446/85, of 25 October 1985, the entities referred to in Article 26 may require its provisional prohibition, pursuant to Article 31.

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

The provision of evidence to the court follows the rules set forth in the Portuguese Civil Procedural Code for the «summary proceedings».

Are there specific procedural reliefs for consumers or consumer associations?

In accordance with Article 18 of the Consumer Protection Act, consumer associations have the right: 1) to represent consumers in hearing and consultations proceedings, 2) to consult the processes' content and further elements in the public administration services with data on the characteristics of goods and services necessary to protect the consumers' interests, 3) to presumption of good faith, 4) to the collective legal action, 5) to complaint and to become assistants in criminal proceedings, 6) to follow the sanctions' proceedings, and 7) to exemption from court fees.

Regarding Directive 93/13, in accordance with Article 26, the court action referred to in Article 25 of Decree-Law No. 446/85 may only be brought by, amongst others, Consumers' Associations with representativeness and trade unions, professional or financial interest associations, and by the Public Prosecutor's Office, officiously, by referral from the Ombudsman.

There are no special rules regarding Directives 2011/83, 1999/44, 2005/29, 98/6, 93/13, 2006/114 and 2008/122.

III. SANCTIONS

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

Pursuant to the injunction procedure as set out in the Consumer Protection Act, the courts may order the cessation of the alleged infringements as well as award damages arising from harmful practices to consumers. The DGC, under Article No. 21, may also order interim measures.

The competent civil court may also award damages under the general rules for civil damages based on Article 483 of the Civil Code, as well as decide for the termination of contract.

Regarding Directives 2005/29 and 2006/114, Article 15 of Decree-Law No. 57/2008 determines that any consumer harmed by any unfair commercial practice prohibited under such Decree-Law shall be compensated under the general terms of law, meaning that the general civil liability rules will be applicable. These damages should be interpreted as an indemnifying measure rather than as a sanction. Courts can also order coercive civil fines, in order to ensure that the decision will be effectively complied with.

There are no special rules regarding Directives 2011/83, 1999/44, 98/6, 93/13, and 2008/122.

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

No infringements to the Directives in scope lead to criminal sanctions.

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

Regarding Directive 2011/83, Decree-Law No. 24/2014 establishes such administrative sanctions: Article 30 establishes that the profits of the monetary fines are dedicated in 60% to the Portuguese State and 40% to the ASAE; Article 31 sets forth fines ranging from EUR 250.00 to EUR 3,700.00 in case the offender is a natural person and from EUR 1,500.00 to EUR 35,000.00 in case the offender is a legal person; in case of attempt or negligence, the monetary amount shall be reduced by half; Article 32 sets forth an ancillary sanction of seizure of property.

Regarding Directive 1999/44, Decree-Law No. 67/2003 establishes such administrative sanctions: Article 12-A sets forth fines ranging from EUR 250.00 to EUR 3,500.00 in case the offender is a natural person, and from EUR 500.00 to EUR 30,000.00 in case the offender is a legal person; in case of attempt or negligence, the monetary amount shall be reduced by half; Article 12-B sets forth ancillary sanctions, which may have a maximum period of 2 years to subsist, such as temporary closure of premises, ban from exercising such activity and exclusion from entitlement to public subsidies or benefits; The profits of the monetary fines are dedicated in 60% to the Portuguese State, 30% to the ASAE or another competent authority and 10% to the CACMEP. As abovementioned, the economic-related attributions of this latter body are now handled by the ASAE.

Regarding Directive 2005/29, Decree-Law No. 57/2008 establishes such administrative sanctions: Article 21.1 sets forth fines ranging from EUR 250.00 to EUR 3,740.98 in case the offender is a natural person, and from EUR 3,000.00 to EUR 44,891.81 in case the offender is a legal person; Article 21.2 sets forth ancillary sanctions, such as (i) seizure of property belonging to the offender, (ii) ban from exercising professions or activities requiring certification, authorisation or approval by public authorities, (iii) closure of premises of the operation which is subject to a permit or licence issued by a public government authority, and (iv) publication of the imposition of fines and additional penalties at the offender's expense. The ancillary sanctions referred to as (i), (ii) and (iii) have a maximum period of 2 years to subsist; Article 21.4 sets forth that in case of negligence, the monetary amount shall be reduced by half. The profits of the monetary fines are dedicated in 60% to the Portuguese State, 30% to the ASAE or another competent authority and 10% to the authority which enforces the sanction.

Regarding Directive 98/6, Decree-Law No. 162/99, of 13 May 1999, establishes such administrative sanctions: Article 11 still sets forth fines in "Escudos" (the Portuguese currency prior to Euro). Said fines range from 50,000\$00 (roughly EUR 250.00) to 750,000\$00 (roughly EUR 3,750.00) in case the offender is a natural person, and from 500,000\$00 (roughly EUR 2,500.00) to 6,000,000\$00 (roughly EUR 30,000.00) in case the offender is a legal person; Article 13 establishes that the profits of the monetary fines are dedicated in 60% to the Portuguese State and 40% to the ASAE, which was previously referred to as Inspeção-Geral das Actividades Económicas ("IGAE");

Regarding Directive 2006/114, Decree-Law No. 57/2008 establishes such administrative sanctions: Article 21.1 sets forth fines ranging from EUR 250.00 to EUR 3,740.98 in case the offender is a natural person, and from EUR 3,000.00 to EUR 44,891.81 in case the offender is a legal person; Article 21.2 sets forth ancillary sanctions, such as (i) seizure of property belonging to the offender, (ii) ban from exercising professions or activities requiring certification, authorisation or approval by public authorities, (iii) closure of premises of the operation which is subject to a permit or licence issued by a public government authority, and (iv) publication of the imposition of fines and additional penalties at the offender's expense. The ancillary sanctions referred to as (i), (ii) and (iii) have a maximum period of 2 years to subsist; Article 21.4 sets forth that in case of negligence, the monetary amount shall be reduced by half. The profits of the monetary fines are dedicated in 60% to the Portuguese State, 30% to ASAE or another competent authority and 10% to the authority which enforces the sanction.

Regarding Directive 2008/122, Decree-Law 275/93, of 5 August 1993, establishes such administrative sanctions: Article 54 sets forth fines ranging from EUR 4,987.98 to EUR 99,759.40; Article 55 sets forth ancillary sanctions, such as i) seizure of property and ii) ban from exercising the activity for two years; regarding the imposition of fines and additional penalties, at the offender's expense, iii) a copy of the decision shall be displayed, for thirty days, in the premises and in a visible manner and iv) the imposition of fines and additional penalties shall be published. The profits of the monetary fines are dedicated in 60% to the Portuguese State and 40% to ASAE.

There are no special rules regarding Directive 93/13.

The only monetary fines established by the abovementioned diplomas are of an administrative nature.

There is no link between the level of monetary fines and the trader's turnover. However, in order to establish the amount of the fine, the economic situation of the offender must be taken into account (Article 18 of the General Administrative Offense Regime).

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

Regarding Directives 2005/29 and 2006/114, in accordance with Article 14 of Decree-Law No. 57/2008, contracts concluded under the influence of any unfair commercial practice may be annulled at the consumer's request in accordance with Article 287 of the Civil Code. The consumer may also request the contract be amended in accordance with the principles of fairness, instead of being annulled. If the nullity of one or more clauses of the contract allows the contract to continue in existence, the consumer may choose to keep the contract, without the unfair terms.

Regarding Directive 93/13, and pursuant to Article 32 of Decree-Law No. 446/85, of 25 October 1985, general contractual clauses that have been permanently banned cannot be included in contracts that the defendant concludes.

There are no special rules regarding Directives 2011/83, 1999/44, 98/6, and 2008/122.

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

Consumers may claim compensation through collective actions. This possibility is set out by the Portuguese Constitution and Law No. 83/95, of 31 August 1995. Furthermore, consumers may consider the injunction procedure, set out in the Consumer Protection Act. Consumers may also claim for civil damages under Article 483 of the Civil Code.

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

Regarding Directives 2005/29 and 2006/114, as abovementioned, Article 21.2 of Decree-Law No. 57/2008 sets forth ancillary sanctions, such as the publication of the imposition of fines and additional penalties at the offender's expense.

Regarding Directive 2008/122, and as previously mentioned, Decree- Law 275/93, of 5 August 1993, sets forth that, regarding the imposition of fines and additional penalties at the offender's expense, (i) a copy of the decision shall be displayed, for thirty days, in the premises and in a visible manner and (ii) the imposition of fines and additional penalties shall be published.

There are no special rules regarding Directives 2011/83, 1999/44, 98/6 and 93/13.

IV. OTHER TYPES OF ENFORCEMENT

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

The Bank of Portugal, the Portuguese Securities Market Commission and the Portuguese Insurance Institute are also competent authorities for such task, in case of unfair commercial practices within the scope of the corresponding financial sector.

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)?

In Portugal there is no mediation service (e. g., an ombudsman) which deals specifically with aspects of the Directives. However, consumers often use consumer defence mediating services for the purpose of mediating conflicts on consumer rights. The Consumer General Directorate is the most important entity for Consumer Rights – <http://www.consumidor.pt/>.

Moreover, there is the Centre of Consumer's Conflicts Arbitration <http://www.arbitragemdeconsumo.org/> with mediation centres all over the country and several local consumer associations.

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