

## I. ADMINISTRATIVE ENFORCEMENT

### Which administrative mechanisms are available to enforce the Directives?

In Bulgaria, Directives 93/13 (Unfair Contract Terms), 98/6 (Price Indication), 1999/44 (Consumer Sales and Guarantees), 2005/29 (Unfair Commercial Practices), 2008/122 (Timeshare, Long-Term Holiday Product, Resale and Exchange Contracts), 2009/22 (Injunctions) and 2011/83 (Consumer Rights) are implemented by the Consumer Protection Act. The general administrative enforcement of this Act, by virtue of its Article 191, Alinea 1, is handled by the Bulgarian Consumer Protection Commission (CPC) (in Bulgarian: Комисия за защита на потребителите). The CPC is a collegial authority with the Minister of Economy with regional units within the territory of the country. The CPC proactively enforces the consumer rights related provisions of the Consumer Protection Act and is also competent for receiving administrative complaints. The general website of the CPC can be found at <https://www.kzp.bg>. The Minister of Economy also has important functions in the field of consumer protection. They conduct and coordinate the state policy in the field of consumer protection and take measures for the integration of the consumer protection policy in the implementation of other sectoral and horizontal policies. The Minister of Economy makes proposals for the adoption of normative acts in the field of consumer protection, directs the work of the National Council for Consumer Protection, coordinates the activities of other administrative bodies related to consumer protection and represents the Republic of Bulgaria in international organisations for consumer protection. Information about the functions and actions of the Minister of Economy can be found on the website of the Ministry of Economy - <https://www.mi.government.bg>

The CPC is responsible for the administrative enforcement of the Tourism Act in the part implementing Directive 90/314 (Package Travel).

The Municipalities also establish local supervising departments on the compliance with the Consumer Protection Act in the parts implementing Directives 2011/83 (Consumer Rights) and 1999/44 (Consumer Sales and Guarantees).

Directive 2006/114 (Misleading and Comparative Advertising) is implemented by the Protection of Competition Act (in Bulgarian: Комисия за защита на конкуренцията) although in many parts not correctly. The general administrative enforcement of this Act, by virtue of its Article 3, Alinea 2, is handled by the Bulgarian Commission for Protection of Competition. It is the national authority of the Republic of Bulgaria in charge of the application of Community Law in the field of competition.

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

The CPC considers administrative complaints filed by every natural or legal person. There is no need to prove a legitimate interest. Investigations can be initiated ex officio.

Consumers under the Tourism Act regulating package travel contracts and travel intermediation contracts (as defined by Directive 2015/2302) can file complaints in case of a dispute with a 'travel agent' ('retailer') or 'tour operator' ('organiser') under that same Act. Investigations can be initiated ex officio as well.

The Commission for Protection of Competition considers administrative complaints filed by interested parties in the cases of misleading and comparative advertising (as defined by Directive 2006/114). The complainant needs to prove a legitimate interest – it must be a competitor of the advertiser. Investigations can be initiated ex officio.

### Do any specific procedural requirements apply to filing administrative complaints?

Before the CPC, a complaint can be filed in two ways: (1) The complaint can be directed to the CPC by submitting an online form on its website (<https://kzp.bg/elektronna-forma-za-podavane-na-zhalba-signal>) together with scanned evidence; (2) The complainant can file the complaint in person at the nearest physical office of CPC. If the complainant desires a more personal settlement of the procedure, he/she can request a personal meeting with one of the CPC's staff members. The same rules apply when it comes to complaints to the CPC based on violations of the Tourism Act in the part implementing Directive 2015/2302 (Package Travel).

Requirements related to the procedure before each Municipal department with supervising powers related to the Consumer Protection Act are approved by each separate Municipal administration and may vary. In general, Municipalities must allow the submission of complaints on paper and a number of them have online portals for submission of electronic complaints as well.

Before the Commission for Protection of Competition, complaints on misleading and comparative advertising (as defined by Directive 2006/114) may be filed on paper with the front office of the Commission as per the template approved by the latter. The complaint must contain the requisites listed in Article 71, Alinea 1 of the Competition Protection Act. The complaint may be filed in person at the front office or via registered mail.

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

The CPC is obligated to enter into its register each complaint submitted by the consumer. The CPC is obligated to investigate the complaint unless the complaint is anonymous or does not contain all requisites required by the law (in which case the consumer must first receive instructions for correction of the complaint in 7 days). If no inspection (at the site of a trader) is needed, the CPC must consider and render a decision (take the relevant enforcement measures) on the complaint in 14 days. If inspection on site is needed, then the term is 1 month.

The Commission for Protection of Competition is obligated to investigate a complaint on misleading and comparative advertising (as defined by Directive 2006/114) unless the complaint is anonymous or does not contain all requisites required by the law. The Commission completes the investigation within 2 months of its initiation. In the cases of factual or legal complexity, the term for investigation may be prolonged by an additional 30 days.

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

If the consumers have written evidence establishing the violations (cash receipts, contracts, invoices, etc.) then they are required to attach them to the complaint. The CPC can require a trader provide the evidence as to the accuracy of the complaint, as well.

No specific requirements related to the procedure before the Municipal departments with supervising powers apply.

As per the Bulgarian law on procedures initiated on misleading and comparative advertising (as defined by Directive 2006/114), the advertiser bears the burden of proof that the relevant advertisement is not misleading and comparative. This rule does not represent correct implementation of Article 7 of Directive 2006/114. All types of evidence are admissible.

## **II. ENFORCEMENT THROUGH COURT ACTION**

#### **Which court actions are available to enforce the Directives?**

The claims for damages under the Consumer Protection Act are heard by the court with jurisdiction according to the general civil claim procedure.

Pursuant to Article 310, Alinea 1, point 4 of the Bulgarian Civil Procedure Code, the rules of Chapter 25 "Accelerated Procedure" of the same Code are applicable to the cease-and-desist claims on violations of the Consumers Protection Act including for breaches of the provisions of implementations of the Directives under scope. The claims of consumers for establishment of the non-validity of unfair contract terms and (as defined by Directive 93/13) are considered pursuant to the Accelerated Procedure as well.

Aside from the abovementioned court procedures under the Civil Procedure Code, four specific procedures present themselves:

An action on cease-and-desist of commercial practices which infringe on the collective interests of consumers is provided by Article 186 of the Consumer Protection Act and Chapter 33 "Class Action Procedure" of the Civil Procedure Code. They are for cease-and-desist of commercial practices which breach the provisions of the Bulgarian legislative implementations of the Directives under scope except Directive 2006/114 (Misleading and Comparative Advertising). The procedure is handled by the competent District Court.

The second procedure is the intra-Community cease-and-desist procedure as set out in Article 186a of the Consumer Protection Act and Chapter 33 "Class Action Procedure" of the Civil Procedure Code. This procedure is similar to the above-described cease-and-desist procedure in nature but has a cross-border effect. The procedure may be initiated in case of a breach originating in Bulgaria but with consequences in another Member State. The procedure is handled by the competent District Court.

The third procedure is the action for collective compensation as set out in Article 188 of the Consumer Protection Act. This procedure is open to the Bulgarian implementations of all Directives under scope except for Directive 2006/114 (Misleading and Comparative Advertising). The aim of this procedure is to provide compensation for a group of consumers that have suffered damage on account of the same cause. The procedure is handled by the competent District Court pursuant to Chapter 33 "Class Action Procedure" of the Civil Procedure Code. Where the claim for compensation has been lodged by more than one consumer association, the compensation shall be awarded to all claimants for joint disposal. The compensation received may be expended only on protection of consumer interests.

The fourth procedure as set out in Article 189 of the Consumer Protection Act applies where damages have been inflicted on two or more consumers provided that:

- (i) the consumers can be identified,
- (ii) the consumers have suffered individual damage caused by one and the same producer, importer, trader or supplier, and
- (iii) the injuries are of the same origin. The procedure is handled by the competent District Court pursuant to Chapter 33 "Class Action Procedure" of the Civil Procedure Code.

The four types of class actions described above are brought according to the place where the infringement was committed or according to the permanent address or registered office of the respondent. They can result in either a judgement or the court approval of a settlement.

#### **Who can start a court action?**

In a general claim for civil damages, anyone may have legal standing if they prove that they suffered damages.

Only consumers may start Accelerated Proceedings under Article 310, Alinea 1, point 4 of the Bulgarian Civil Procedure Code which are applicable to the individual claims for establishment or cease-and-desist of violations of the Consumers Protection Act, including for breaches of the provisions of implementations of Directives under scope.

The claims for damages under the provisions of the Consumer Protection Act implementing Directive 1999/44 (Consumer Sales and Guarantees) may be started by any consumer who has sustained damages due to infringement of a mandatory or commercial guarantee.

Regarding the aforementioned special class action procedures, legal standing is granted through specific provisions of the Consumer Protection Act:

The consumer protection associations (included in the list under Article 164, Alinea 1, point 7 of the Consumer Protection Act) or CPC may file a class action provided by Article 186 of the Consumer Protection Act.

The qualified entities in other Member States may file an intra-Community cease-and-desist procedure of Article 186a of the Consumer Protection Act. A qualified entity may bring an action if the infringement adversely affects the interests subject to the protection of this qualified entity and the entity is on the list of qualified entities, prepared by the European Commission and published in the Official Journal of the European Union.

A consumer association is entitled to file a class action for collective compensation as set out in Article 188 of the Consumer Protection Act.

A consumer association may bring an action as set out in Article 189 of the Consumer Protection Act on their behalf before the court provided that the consumer association has been authorised in writing by an express power of attorney for representation in legal proceedings by at least two consumers to bring action for compensation on behalf of said consumers, and to represent them in the proceedings.

#### **Can court actions be initiated by competitors?**

In a general claim for civil damages, competitors may have legal standing if they have suffered damage. Regarding the specific procedures set out above, the following applies:

For the cease-and-desist procedure of Article 186 of the Consumer Protection Act, competitors cannot be considered interested parties and cannot therefore initiate proceedings.

Only qualified entities may file an intra-Community cease-and-desist claim under Article 186a of the Consumer Protection Act.

The claims for collective redress under Articles 188 and 189 of the Consumer Protection Act cannot be filed by a competitor.

#### **Can the case be handled through an accelerated procedure?**

The cease-and-desist claims under Articles 186, 186a, 188 and 189 of the Consumer Protection Act follow the special class action procedure under Chapter 33 "Class Actions Procedure" of the Civil Procedure Code.

A cease-and-desist claim of an individual consumer follows the accelerated procedure under Chapter 25 "Accelerated Procedure" of the Civil Procedure Code. This means that the case can typically be decided in a short period of time, as the terms and the rules of procedure are shortened and simplified as opposed to those of the general civil proceedings.

The claims of consumers for establishment of the non-validity of unfair contract terms (as defined by Directives 93/13) are considered pursuant to the Accelerated Procedure as well.

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

The Bulgarian legislation implementing the Directives in scope does not contain any specific requirements on this matter. Consequently, the general rules on evidence as laid down in the Bulgarian Civil Procedure Code are applicable.

#### **Are there specific procedural reliefs for consumers or consumer associations?**

Article 113 of the Civil Procedure Code provides that a consumer may file a claim for protection of their individual rights with the court of their address as opposed to the general rule that claims are filed with the court where the address of the respondent is.

Pursuant to Article 146, Alinea 4 of the Consumer Protection Act, if a consumer files a claim for establishment of the non-validity of unfair contract terms (as defined by Directive 93/13), the trader, who is respondent in the court case, bears the burden to prove that the challenged contract clauses were individually negotiated.

The other pieces of legislation, including the Civil Procedure Code, do not contain any specific procedural reliefs for consumers.

The competent civil court can award the following remedies in case of civil proceedings brought before it:

in cases of class action brought on the grounds of the Consumer Protection Act: cessation or prohibition of any actions or commercial practices which infringe on the collective interests of consumers and are in breach of the provisions of the Bulgarian legislative implementations of the Directives under scope, except for Directive 2006/114 (Misleading and Comparative Advertising).

Establishment of the non-validity of unfair contract terms (as defined by Directive 93/13) following civil claims filed by consumers.

Compensation for damages in the framework of a claim for civil damages based on the general rules of Bulgarian tort law. These damages, however, should rather be interpreted as an indemnifying measure than as a sanction.

In addition, all consumers are entitled to terminate contracts with traders concluded as a result of the use of unfair commercial practice in cases where such practice is prohibited with a final and non-appealable order issued by the CPC.

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

There are no criminal sanctions related specifically to the infringement of the provisions of the Directives under the Bulgarian law. A trader infringing the national laws implementing the Directives could be held criminally liable only in case the specific behaviour can also qualify as a criminal offence under any of the specific provisions of the Bulgarian Penal Code (e.g., deceit).

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

Infringements of the Bulgarian implementations of the Directives under scope are punishable with several levels of administrative sanction. More specifically, these administrative sanctions include:

1. Imposing an administrative fine (pecuniary sanction) by the CPC for the following types of administrative offences:

For violation of the national provisions implementing Directive 98/6 (Price Indication)- an administrative fine ranging from BGN 300/EUR 150 to BGN 3.000 /EUR 1.500 (Article 200 of the Consumer Protection Act).

For violation of the national provisions implementing Directive 1999/44 (Consumer Sales and Guarantees) - an administrative fine ranging from BGN 500 /EUR 250 to BGN 3.000/EUR 1.500 (Article 221 and Article 222a of the Consumer Protection Act).

For violation of the national provisions implementing Directive 2005/29 (Unfair Commercial Practices) Article 210a, 210b and 210c of the Consumer Protection Act provide for the following administrative sanctions:

- a) an administrative fine ranging from BGN 1.000/EUR 500 to BGN 50.000/EUR 25.000 for committing unfair commercial practices; and
- b) an administrative fine ranging from BGN 3.000/EUR 1.500 to BGN 50.000/EUR 25.000 for failure to comply with an order issued by the CPC prohibiting certain unfair commercial practice.

For violation of the national provisions implementing Directive 2008/122 (Timeshare, Long-Term Holiday Product, Resale and Exchange Contracts)- an administrative fine ranging from BGN 500/EUR 250 to BGN 3.000/EUR 1.500 for each particular case (Article 223 and 224 of the Consumer Protection Act)

Violations of the national provisions implementing Directive 2011/83 (Consumer Rights) are punishable by the following administrative fines:

- a) For violation of the information requirements for contracts other than distance or off-premises contracts- an administrative fine ranging from BGN 500/ EUR 250 to BGN 3.000/EUR 1.500 for each particular case (Article 197 of the Consumer Protection Act).

b) For violation of the information requirements and formal requirements for distance and off-premises contracts, as well as for infringement of the provisions regulating the right of withdrawal- an administrative fine ranging from BGN 100/EUR 50 to BGN 1.000/EUR 500 for natural persons and from BGN 500/EUR 250 to BGN 3.000/EUR 1.500 for legal entities (Article 204 and Article 206 of the Consumer Protection Act).

c) For impeding the right of a consumer to withdraw from a concluded distance contract or from an off-premises contract the applicable sanction is an administrative fine from BGN 1,000/EUR 500 to BGN 3,000/EUR 1.500 for each particular case.

The infringement of several provisions of the Tourism Act (implementing Directive 2015/2302 (Package Travel) may trigger administrative fines ranging from BGN 500/EUR 250 to BGN 3000/EUR 1.500 (Article 194- 198 of the Tourism Act)

The authority responsible for imposing the administrative fines described above is the CPC, acting through its regional units. The Consumer Protection Act does not explicitly regulate any specific criteria for determining the amount of the administrative fine in each individual case. Also, there are no explicit provisions establishing a link between the level of monetary fines and the trader's turnover (such provisions exist only in relation to the fines imposed under the national implementations of Directive 2006/114- see the information provided below). Under the general rules of the Bulgarian administrative penal law when determining the amount of the fine, the authority should take into consideration the gravity of the violation, the motives or inducements for committing the violation and other mitigating and aggravating circumstances, as well as the property status of the offender. In cases of repeated violation, the offenders shall be liable to a fine in double the amount of the statutory prescribed levels. As a general rule, the Consumer Protection Act does not provide for differences in the amount of the monetary fines depending on whether the trader who acted in breach of the Directives' provisions is a natural or a legal person, apart from a few exceptions (see the fines under Article 204 and Article 206 of the Consumer Protection Act above).

The penal decrees issued by the CPC can be appealed before the competent regional courts and the first instance court judgements are subject to judicial review by the respective administrative courts acting as cassation instance courts.

The fines collected in accordance with the above provisions are administered under the budget of the Ministry of Economy. The Consumer Protection Act explicitly provides that the budget of the Ministry of Economy should allocate resources for various consumer protection purposes, such as: programmes and participation in national and international consumer protection events, supporting the activities of consumer organisations, providing information and promoting activities related to the protection of consumer rights; assisting the activities of conciliation committees, etc.

a) In cases of established violations of the national provisions implementing Directive 2006/114 (Misleading and Comparative Advertising) the Bulgarian Commission for Protection of Competition is empowered to issue a decision ordering: (i) suspension of the violation; and (ii) imposing an administrative fine on the infringer amounting to up to 10 % of its total national annual turnover for the previous financial year. These decisions of the Bulgarian Commission for Protection of Competition are subject to appeal before the Supreme Administrative Court.

b) Where unfair commercial practices are established under Directive 2005/29, the CPC issues an order prohibiting the respective practice as per Article 68l of the Consumer Protection Act. Where the unfair practice arises from activities related to advertising, the Chairperson of the CPC may oblige the advertiser and/or the advertising agency to publish, at their own expense and in an appropriate form, the order ascertaining the violation, as well as the duly corrected advertisement.

c) In addition, the Chairperson of the CPC is entitled to impose certain compulsory administrative measures, such as ordering the offender to discontinue the infringement or requiring from the offender to make a statement that he/she will discontinue the infringement and, if necessary, oblige him/her to disclose the statement in the public domain (Article 192a, Alinea 2 of the Consumer Protection Act).

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

As a general rule, a cease-and-desist decision issued by the CPC, or the court will not affect the individual transactions between the trader and consumers who are not parties to the cease-and-desist proceedings. However, a notable exception is provided by Article 68m of the Consumer Protection Act as regards violations of national provisions implementing Directive 2005/29 (Unfair Commercial Practices). Under this provision, in cases where the CPC has issued a final and non-appealable order prohibiting certain unfair commercial practice, all consumers shall be entitled to rescind the contracts with the trader concluded as a result of the use of the unfair commercial practice and to claim compensation for damages under the general Bulgarian tort law provisions. In such case, all civil courts will be bound by the enforceable order of the CPC prohibiting the unfair commercial practice.

#### **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 regardless of whether cease-and-desist proceedings for violation of the Consumer Protection Act have been initiated. Such claim for damages is subject to the general rules of Bulgarian tort law (article 45 of the Contracts and Obligations Act) which provides that: 'Every person must rectify the damage he has guiltily caused to another person.' For this purpose, the consumer has to prove: (i) that the trader acted in breach of law, (ii) the damage suffered by the consumer, and (iii) a direct causal link between the unlawful behaviour of the trader and the damage. As explained above, if the CPC has issued an order prohibiting a certain unfair commercial practice and this order has become final and enforceable, it is binding for all civil courts as regards the fact of the violation. Accordingly, all consumers concerned can bring civil actions against the trader who committed the unfair commercial practice, and, in these lawsuits, they would only need to prove the individual damages suffered and their amount. Furthermore, consumers may also rely on the abovementioned claim for collective redress under Article 189 of the Consumer Protection Act to achieve compensation.

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

In cases of claims for collective redress specified above, the competent court can also order the publication of the judgement at the expense of the trader who violated the provisions of the Bulgarian legislative implementations of the Directives at scope. (Article 187 of the Consumer Protection Act). This remedy is only available in class action procedures brought on the grounds of the Consumer Protection Act.

As regards the orders of the CPC prohibiting unfair commercial practices (Directive 2005/29), they shall be published on the website of the authority as soon as they become effective (Article 68m, Alinea 4 of the Consumer Protection Act).

In addition, in cases of established violations of the national provisions implementing Directive 2006/114 (Misleading and Comparative Advertising), the Bulgarian Commission for Protection of Competition may impose an obligation on the advertiser and/or advertising agency to publicly announce the decision, as well as the duly corrected advertisement, at their own expense and in an appropriate manner.

### III. OTHER TYPES OF ENFORCEMENT

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

Regarding the enforcement of the national implementations of Directive 2006/114 (Misleading and Comparative Advertising), the most relevant example for a self-regulatory enforcement system in Bulgaria is the National Council for Self-regulation ("NCSR"). The NCSR is not a government authority but a non-profit organisation for public benefit founded by Bulgarian associations in the advertising and media sector and responsible for ensuring compliance with the Ethical Code for Advertising and Commercial Communication in Bulgaria ('Ethical Code'). The decisions of the NCSR by which a breach of the Ethical Code is established do not qualify as administrative acts- they are binding only for the members of the NCSR. For those entities who have not accepted the Ethical Code, the decisions of NCSR are not obligatory but recommendatory. However, in case of non-compliance with the recommendations of the NCSR, this organisation may: (i) ask its media members to discontinue communicating the information found to be in breach of the Ethical Code; and (ii) file complaints with the competent regulatory authorities (e.g., the CPC, the Competition Protection Commission, etc.) for imposing sanctions under the applicable law. Therefore, NCSR has important moral authority, and, in practice, advertisers will often comply with its recommendations.

#### **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)?**

a) In the first place, the Consumer Protection Act provides for the formation of conciliation commissions which are alternative dispute resolution entities within the meaning of Directive 2013/11/EU. Such commissions are set up by order of the Minister of Economy and are two types: general and sector specific. The general conciliation commissions assist with the out-of-court settlement of disputes between consumers and traders with respect to warranty liability, unfair contract terms, unfair commercial practices, provision of material information, tourist services and contracts concluded with consumers. The sector-specific conciliation commissions assist with the settlement of disputes between consumers and traders in the following economic sectors: energy, water supply, telecommunications, transport, and financial services.

Each general conciliation commission consists of three persons: one representative of the CPC, designated by its chairperson, one representative of a traders' association, and one representative of a consumer association. Each sector-specific conciliation commission consists of three persons as follows: a chairperson designated by the respective regulatory authority, one CPC representative and one representative of a traders' association depending on the subject of the dispute.

The conciliation commissions assist the voluntary settlement of disputes through reaching an agreement between the parties involved. If a party fails to comply with the agreement that is concluded, the other party may refer the dispute to a court for resolution. The parties may make enforceable the settlement reached in the conciliation procedure by submitting it for the competent court's approval. The proceedings before the conciliation commission are relatively quick and free of charge for the consumer.

b) In addition, the Consumer Protection Act provides for a possibility for out-of-court settlement of consumer disputes with the assistance of an alternative dispute resolution entity (ADR entity). Such ADR entities are indicated in a list of the Ministry of Economy and could comprise only one natural person or be a collegial body. The ADR entities are competent to review domestic and cross-border disputes arising between consumers and traders in relation to online and offline sales or service contracts and the procedures may end with (i) the proposal of a solution; (ii) imposition of a solution; or (iii) bringing the parties to the dispute together with the aim of facilitating an amicable settlement.

c) Another manner for reaching amicable resolution of a dispute is by referring to a mediator appointed at the request of a consumer by the submission of an application to the CPC.

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