

## I. ADMINISTRATIVE ENFORCEMENT

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

In Finland, Directives 93/13/EEC (Unfair Contract Terms), 1999/44/EC (Consumer Sales and Guarantees), 2005/29/EC (Unfair Commercial Practices), 2006/114/EC (Misleading and Comparative Advertising), 2008/122/EC (Timeshare) and 2011/83/EC (Consumer Rights) are implemented by the Consumer Protection Act (38/1978).

The general administrative enforcement of the Consumer Protection Act is, by virtue of section 1 of the Act on Finnish Competition and Consumer Authority (661/2012), handled by the Finnish Competition and Consumer Authority ("FCCA") (in Finnish: "Kilpailu- ja kuluttajavirasto"). The FCCA proactively enforces the consumer rights-related provisions of the Consumer Protection Act. The Consumer Ombudsman is a major part of the FCCA and enforces the consumer rights (e.g. by publishing decisions and guidelines online). The general website of the FCCA can be found at <https://www.kkv.fi/en/>.

Apart from the Consumer Ombudsman, the Financial Supervisory Authority is competent in so far as it monitors the compliance with Directives 93/13/EEC and 2005/29/EC, as nationally implemented in the applicable laws in accordance with section 2(2) of the Act on Certain Powers of Consumer Protection Authorities (566/2020, "CPCPA").

The Consumer Ombudsman or the Regional State Administrative Agencies may impose prohibitions under chapter 2, section 16 of the Consumer Protection Act in matters involving practices in violation of the provisions governing the disclosure of the price, if the illegality of the practice is evident and the practice of compliance with said provisions has been established in similar cases.

Directive 98/6 (Price Indication) is implemented by the Government Decree on the indication of the price of a consumer good in marketing (553/2013). According to the CPCPA, the general administrative enforcement of Directive 98/6/EC is handled by the Regional Administrative Offices and the Consumer Ombudsman.

Directive 2015/2302 (Package Travel) is implemented by the Act on Travel Service Combinations (901/2017, "TSC") and the Act on Travel Service Combination Providers (921/2017, "TSCP"):

The general administrative enforcement of the TSC is by the Consumer Ombudsman who may under section 43 of TSC prohibit a travel operator, travel agent or other business from continuing or repeating practices in violation of the provisions of TSC, if necessary for the protection of consumers.

The general administrative enforcement of the TSCP is by the FCCA and Regional Administrative Offices. The FCCA shall under section 22 of TSCP prohibit a business from engaging in business activities in accordance with TSCP if the provider of travel service combinations required to provide a guarantee has not provided a guarantee or the provided guarantee can no longer be accepted. In addition, if a provider of travel service combinations fails to comply with obligations provided for in section 12, section 13(2), section 19 or section 25 of the TSCP, the FCCA may require such provider to fulfill its obligations within a given time limit. The FCCA's decision may be appealed to an administrative court in accordance with section 27 of the TSCP.

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

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

Business' marketing can be prohibited on pain of a fine and a collective redress may be determined only by the Market Court, not by the administrative authority.

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

A complaint shall be made in writing and submitted to the FCCA. Complaints can be submitted e.g. by an online form through <https://www.kkv.fi/en/consumer-advice/>

The Consumer Dispute Board may refuse to process a complaint if the consumer has not first contacted the Consumer Advisory Services (cf. section IV).

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

Yes, all complaints and inquiries made to the FCCA are examined and recorded. However, the Consumer Ombudsman and the Consumer Disputes Board (Fi: Kuluttajariitalautakunta) may refuse to investigate a complaint if certain procedural requirements are not met or, in case of the Consumer Ombudsman, where the complaint concerns an individual consumer seeking compensation for errors in goods/services (cf. section IV).

Decisions are published online, though only in Finnish. The decision can be found at <https://www.kkv.fi/ratkaisut-ja-julkaisut/kuluttaja-asiat/kuluttaja-asiemiehen-ratkaisut/>

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

The Consumer Protection Act does not contain such requirements. The Consumer Disputes Board has in its instructions how to make complaints instructed on the importance of evidence, and that it is the complainant's (the consumer) responsibility to show that actual damage has been caused. The Consumer Disputes Board has given the following examples of evidence: a receipt, an e-mail correspondence with the seller, an offer, an order confirmation, a sales or installment agreement, and a copy of advertisement.

In administrative proceedings, the procedure is conducted in writing and therefore no witnesses are usually heard.

## II. ENFORCEMENT THROUGH COURT ACTION

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

The general enforcement of the Consumer Protection Act (implementing Directives 93/13/EEC, 1999/44/EC, 2005/29/EC, 2006/114/EC, 2008/122/EC and 2011/83/EC), the Unfair Business Practices Act (implementing Directives 2005/29/EC, 2006/114/EC and 2008/122/EC) and the TSC (implementing Directive (EU) 2015/2302) is handled by the Market Court as the first instance, and by the Supreme Court as the second and highest instance in Finland. The Market Court handles any civil court actions concerning violations of said Acts. In addition, a general claim for civil damages can be filed before the competent civil courts in accordance with the Code of Judicial Procedure (1.1.1734/4).

The Market Court has also, on the Consumer Ombudsman's proposal, the power to impose an administrative fine i) for violation of certain provisions of the Consumer Protection Act under sections 13 and 16 of the CPCPA and ii) for violation of certain provisions on passenger rights under section 14 of the CPCPA. The decision of the Market Court on the administrative fine may be appealed to the Supreme Administrative Court and no leave to appeal is required.

Most of the court actions available consist of imposing prohibitions for businesses to perform actions that breach the requirements of the local laws:

In case of door-to-door selling and distance selling (related to Directive 2011/83/EC), where a business breaches the Act's provisions on door-to-door/distance selling, the business can be prohibited from continuing or renewing the breaching action or any equivalent action. A conditional fine can be introduced to ensure that the prohibition is followed. The same applies to marketing activities in consumer relations and consumer credits. Such prohibitions can be ordered by the Market Court or the Consumer Ombudsman (depending on the situation), as well as the Regional Administrative Offices in specific cases (such as unlawful price information of consumer goods) (cf. section III).

The Unfair Business Practices Act (which implements the Directive 2005/29/EC, 2006/114/EC and 2008/122/EC) states in section 6 that the Market Court may prohibit a business from continuing or repeating practices that violate sections 1 – 3 of the Unfair Business Practices Act. The prohibition may be reinforced through a conditional fine, unless this is unnecessary for a special reason. When such prohibition is imposed, the Market Court may order the business to undertake appropriate remedial action within a specified period and reinforce it through a conditional fine. The Market Court can also order that the prohibition decision is published in one or more newspapers/other publications at the expense of the defendant.

The TSC (which implements Directive (EU) 2015/2302) states in section 43 that the Market Court may prohibit a travel operator, travel agent or other business from continuing or repeating practices in violation of the provisions of TSC, if necessary for the protection of consumers. The prohibition may be reinforced through a conditional fine, unless this is unnecessary for a special reason.

The TSC also states in section 39 that if there is a technical deficiency in the business' system for booking a travel combination, the business shall be obliged to compensate the passenger for the damage caused by the booking error without undue delay.

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

A natural person or a legal entity such as a competitor can initiate Court action. The Consumer Protection Act explicitly allows the Consumer Ombudsman to initiate a procedure even without individual interest in the case.

According to the Act on Class Actions (444/2007), collective redress is possible, for example, in disputes concerning a defective consumer good or the interpretation of contract terms. Only the Consumer Ombudsman can file for class action and represent the plaintiffs. For a matter to be handled as a class action, several persons must have a claim against the same defendant based on similar grounds.

No class actions have been filed in Finland.

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

Yes. Competitors may initiate court actions if they have suffered damage because of the business' actions.

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

The Market Court may give an interim injunction in a short period of time but the definitive decision in the case is made in a regular court procedure, which may take some time. There is no specific accelerated procedure available in Finland for court proceedings.

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

The Consumer Protection Act or any other Act by which the Directives have been implemented do not contain provisions regarding the provision of evidence to the court. However, the Consumer Protection Act contains the following provisions on the burden of proof in relation to door-to-door selling and distance selling:

According to chapter 6 section 13(a) of the Consumer Protection Act, a business bears the burden of proving that it has provided the consumer with sufficient information as set forth in sections 9-13 of the Consumer Protection Act.

According to chapter 6 section 14 of the Consumer Protection Act, the consumer bears the burden of proving that it has cancelled the agreement in accordance with said section.

The general rules on provision of evidence, as laid down in the Code of Judicial Procedure, are applicable. According to chapter 17 section 2 of the Code of Judicial Procedure, in civil actions, the parties shall prove the facts that their demands or objections are based on. This is done by the provision of necessary evidence. According to section 40 of the same chapter, the court can also order an object or a document to be provided to the court ex officio.

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

Neither the Consumer Protection Act nor any other Act by which the Directives are implemented contain any provisions on this matter.

According to section 17, subsection 2 of the Act on Class Actions, a member of the group that has initiated the class action will not be liable for legal expenses.

Legal aid is available in Finland to everyone else except companies and corporations. Thus, a consumer could obtain assistance in legal matters fully or partially at the expense of the State. However, legal aid is usually not granted if the applicant has insurance that covers legal expenses of the matter at hand.

### **III. SANCTIONS**

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

According to the Consumer Protection Act (related to Directives 93/13/EEC, Directive 98/6/EC, 1999/44/EC, 2005/29/EC, 2006/114/EC, 2008/122/EC and 2011/83/EC), a business may be prohibited from continuing or repeating the use of any practice that violates the provisions of the Act or any Decrees issued on the basis of the same (such as the Government Decree on price indication (553/2013) related to Directive 98/6/EC), or a practice comparable to the same. Prohibitions shall be reinforced by a conditional fine (the amount varies on a case-by-case basis). In addition, a competent civil court (i.e., a district court as the first instance) can award damages in the framework of a claim for civil damages (cf. below).

According to the Unfair Business Practices Act (related to Directives 2005/29/EC, 2006/114/EC and 2008/122/EC), the Market Court may prohibit a business from continuing or repeating practices that violate sections 1 – 3 of the Unfair Business Practices Act. The prohibition may be reinforced through a conditional fine, unless this is unnecessary for a special reason. When such prohibition is imposed, the Market Court may order the business to undertake appropriate remedial action within a specified period and reinforce it through a conditional fine. The Market Court can also order that the prohibition decision be published in one or more newspapers/other publications at the expense of the defendant.

According to the TSC (related to the Directive (EU) 2015/2302), the Market Court may prohibit a travel operator, travel agent or other business from continuing or repeating practices in violation of provision of TSC, if necessary for the protection of consumers. The prohibition may be reinforced through a conditional fine, unless this is unnecessary for a special reason.

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

The criminal sanctions for the infringement of the Directives' provisions are laid down in chapter 30 of the Criminal Code of Finland.

A person who in business uses false or misleading information about its own business or the business of another and by doing this, causes damage to the business of another, shall be sentenced for an unfair competition offence to a fine (not fixed) or imprisonment (max. 1 year).

A person who in the professional advertising of goods, services, real estate, bonds and securities of a private limited liability company or other commodities gives false or misleading information that is significant from the point of view of the group at which the advertising is directed, shall be sentenced for an advertising offence to a fine (not fixed) or to imprisonment (max. 1 year).

A business who, without providing a guarantee, engages in the provision of travel service combinations for which a guarantee is required under section 3 of the TSCP and thus undermines the traveller's financial security shall be, unless a more severe penalty has been provided elsewhere in law, sentenced for a travel service offence to a fine or imprisonment (max. 1 year). If a travel service offence, considering the financial gain sought by the offence or other aspects of the offence, is, when assessed as a whole, deemed of minor significance, the offender shall be sentenced for a travel service violation to a fine. A provider of travel service combination who fails to comply with the obligation in Section 12 of the TSCP to notify of a change in operations shall also be sentenced for a travel service violation.

The business in violation of these provisions can be ordered to pay a criminal corporate fine by a criminal court (i.e. a district court as the first instance).

The amount may vary between EUR 850 - 850,000. The amount of the corporate fine shall be determined in accordance with the nature and extent of the omission or the participation of the management, and the financial standing of the corporation. When evaluating the financial standing of the corporation, the size and solvency of the corporation, as well as the earnings and the other essential indicators of the financial standing of the corporation shall be taken into consideration. The fine is not based on a certain percentage of the business' turnover, but merely on a case-by-case assessment based on the abovementioned factors. The corporate fines and the amounts possible apply to legal persons only. The amounts of potential fines applicable to natural persons (and also the so-called sole proprietors) cannot be defined in advance.

The other option to determine the amount of the fines is the "day fine system", which applies to natural persons. The fine is imposed as unit fines and the amount of the unit depends on the person's net income (a percentage). For example, 20 unit fines at EUR 10 a piece equal EUR 200. The more blameworthy the act, the more unit fines are imposed. The statutory maximum number of unit fines is 120 or, if the fine is imposed for several offences, 240. The statutory minimum number of unit fines to be imposed is one.

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

The Regional Administrative Offices and the FCCA may reinforce any prohibitions by a conditional fine. However, the monetary amount of the conditional fines to be paid shall be determined by the Market Court based on a case-by-case assessment.

Since the enactment of CPCPA in 2020, the Market Court has also had the possibility, on the proposal of the Consumer Ombudsman, to impose an administrative fine for the violation (i) of certain provisions of the Consumer Protection Act (sections 13 and 16 of the CPCPA), and (ii) of certain provisions on passenger rights (section 14 of the CPCPA). The amount of the administrative fine is based on an overall assessment and the following factors are taken into account in its determination: 1) the nature, extent, gravity and duration of the infringement, 2) the benefit obtained by the infringement, 3) trader's actions to mitigate or repair the damage, and 4) any previous infringements of consumer protection regulations by the trader. However, the administrative fine shall not exceed 4 % of the annual turnover of the financial year that precedes the end of the infringement in question. If the financial statement has not yet been completed at the time of the imposition of the administrative fine, or if the business has only recently begun and the financial statement is not available, the turnover may be estimated on the basis of another statement received. The Market Court's decision on administrative fine may be appealed to the Supreme Administrative Court and no leave to appeal is required.

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

The Market Court may order the business on whom the prohibition is imposed or the business who commissioned or carried out the illegal marketing practice to rectify the violation by a set deadline if the practice is deemed to cause obvious harm to consumers. The order may be reinforced by a conditional fine. Otherwise, an individual transaction is not affected by a decision, unless the consumer in question is a party to the procedure. If a consumer is a party to the procedure, his contract may be declared as null and void as a result of the decision declaring the violation of the Directives.

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

The Market Court does not have the authority to order the business to pay any compensation to individual consumers. The contracts that are previously made between the business and consumers are not voided automatically. However, a consumer can take legal action to the civil court and demand compensation from the business.

Further, the monetary fines paid due to infringements are not dedicated to any certain purposes, e.g. consumer protection purposes. The fines paid are merely an income of the State.

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

In Finland, the decisions of the Market Court, administrative courts and civil courts are public by nature. They may also require that the business in question publish the decision and the rectifying act the trader is ordered to comply with. The decisions of the higher courts (e.g. the Supreme Court) are available online in the court's database, the lower courts' (e.g. the district courts) decisions can be requested from the court in question.

## **IV. OTHER TYPES OF ENFORCEMENT**

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

The Board of Business Practice (Fi: Liiketalautakunta, "LTL") provides a rapid and effective procedure for companies to settle disputes regarding unfair trade practices. The LTL applies the Consolidated ICC Code as such. The adjudications made by the LTL are confidential. However, in the event of a respondent's non-compliance, the complainant may be authorised to publish the decision.

The Council of Ethics in Advertising (Fi: Mainonnan eettinen neuvosto, "MEN") issues statements on whether an advertisement or an advertising practice is ethically acceptable. It deals with issues like discrimination, decency and social responsibility. The Council mainly deals with requests from consumers and with issues that are deemed to have public significance. The statements are only recommendations, and they are not binding.

The statements are published at: <http://kauppakamari.fi/lautakunnat/men/lausunnot/>

**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 connection with the FCCA, there is a Consumer Disputes Board that handles cases between consumers and businesses. These proceedings are conducted in writing, they are free of charge, and no legal assistance is required. However, the board is not authorised to give any binding decisions but recommendations only. As the names of the businesses who refuse to comply with the board's recommendations are often published by consumer organisations, the decisions are mostly complied with.

Before making a request for dispute settlement to the Consumer Disputes Board, the consumer must get in contact with the Consumer Advisory Services (available here <https://www.kkv.fi/en/consumer-advice/>) or the European Consumer Centre. The consumer rights advisors can be contacted at a Local Register Office. They provide free guidance and mediation in disputes. The Consumer Advisory Services do not make decisions, they merely provide guidance and mediation for consumers in various matters concerning consumer products or services.

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