BELGIUM

Enforcement PDF (160 Kb) en

I.ADMINISTRATIVE ENFORCEMENT

Which administrative mechanisms are available to enforce the Directives?

In Belgium, Directives 93/13 (Unfair Contract Terms), 98/6 (Price Indication), 1999/44 (Consumer Sales and Guarantees), 2005/29 (Unfair Commercial Practices), 2006/114 (Misleading and Comparative Advertising), and 2011/83 (Consumer Rights) are implemented by the Code of Economic Law in Book VI. The general administrative (technically speaking the provisions of Book XV set forth criminal procedure rules; the administrative peculiarity in Belgium is that they are exercised by an administrative entity - ADEI) enforcement of this Code, by virtue of its article XV.2, is handled by the Directorate General Economic Inspection (ADEI) (in Dutch: "Algemene Directie Economische Inspectie"; in French: "Direction Générale de l'Inspection Économique"), which is part of the Federal Public Service of Economy, SMEs, Self- employed and Energy (FPS Economy). The ADEI proactively enforces the consumer rights related provisions of the Code of Economic Law and is also competent for receiving administrative complaints. The general website of the ADEI can be found at http://economie.fgov.be.
The Belgian implementation of Directive 2008/122 (Timeshare), despite not being included in the Code, is also enforced by the ADEI.
Regarding violations of the Code of Economic Law's provisions on distance contracts (which stem from Directive 2011/83), article XV.11 of the Code confirms that, on top of the general competence the ADEI has in these matters, the Foodstuffs Inspectorate (FI) of the Federal Public Service of Public Health, Security of the Food Chain and Environment (FPS Public Health) is equally competent within the scope of its task of supervising trade of foodstuffs.
Violations of Book VI of the CEL, which implements the aforementioned Directives, can, on top of the ADEI and according to Article XV.11 CEL, also be investigated by the Financial Services and Market Authority when the violations relate to financial services.
A notable exception to the sweeping competence of the ADEI concerns the administrative enforcement of Directive 90/314 ("Package Travel Directive"), for which the Arbitration Commission on Travel (GR) is competent (in Dutch: "Geschillencommissie Reizen"; in French: "Commission de Litiges Voyages"). The GR provides an alternative to protracted litigation by offering an arbitration procedure and a conciliation procedure for disputes falling under the scope of the Package Travel Directive as implemented into Belgian law by the Act of 16 February 1994 regulating the package travel contracts and the travel intermediation contracts. The general website of the GR can be found at http://www.clv-gr.be/index_nl.html.
Furthermore, the Injunction Directive was not implemented into Belgian law.

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

The ADEI 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.
The FI is informed by customs services but may also initiate investigations when it has been informed in any other way of external features suggesting that foodstuffs or other products that are stored in a fictional, public or private warehouse or foodstuffs or other products meant for import may be spoiled, harmful, or have been declared harmful by the general management.
Consumers' under the Act regulating the package travel contracts and the travel intermediation contracts (as defined by Directive 90/314) can file complaints in case of a dispute with a 'retailer' or 'organiser' under that same Act. No investigations can be initiated ex officio.

Do any specific procedural requirements apply to filing administrative complaints?

A contact point (https://meldpunt.belgie.be/meldpunt/en/welcome) for consumers and enterprises was developed and made available as of 22 February 2016. This largely automated tool allows people who wish to file a complaint to choose from a number of situations. After they have picked the problem they encountered, they are asked to answer a number of questions whereby the answer to a certain question, may influence the next step. The combination of answers given will result in an automated answer that is sent to the complainant immediately when he/she sends in his/her complaint. For people who do not wish to use the internet, it is still possible to send a complaint by normal letter. This is, however, less than 10% of the total number of complaints.
No specific requirements related to the procedure before the FI apply.
Regarding the procedure before the GR, complaints should be filed within one month of return from the journey or within one month from the anticipated departure date if the journey fell through. From that date onward, parties have four months to reach a compromise. Upon expiration of this period, a procedure before the GR may be brought. The conciliation procedure is only accessible if the GR standard terms and conditions were used. The arbitration procedure is accessible even if no such standard terms were used provided both parties in the dispute agreed to an arbitral compromise.

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

Until December 2009, the ADEI investigated every complaint it received. However, as this consumed a lot of resources, the ADEI decided to launch a rationalisation programme, following the example of some other Member States. Although this rationalisation programme was only introduced in December 2009, it has already resulted in a dismissal of 40% of all complaints. Recently, the ADEI has also started to take into account the financial loss suffered by the complainant. If no financial loss, or only a very small financial loss, has been suffered, there is a high probability that the complaint will not be investigated by the ADEI.
The FI is not obligated to engage in an investigation once it has been notified.
The GR is impartial and will offer no advice. It merely provides the organisation of the two procedures.

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

Under the general scheme before the ADEI, a competent official can require a trader to provide the evidence as to the accuracy of any statements disclosed in a commercial practice (article XV.16 and XVII.13 of the Code of Economic Law).
No specific requirements related to the procedure before the FI apply.
For a case to be admissible under either the arbitration procedure or the conciliation procedure in the context of the GR, it should include evidence of the complaint on site (if applicable), and evidence of the complaint upon return.

II. ENFORCEMENT THROUGH COURT ACTION

Which court actions are available to enforce the Directives?

Aside from a general claim for civil damages under article 1382 of the old Civil Code, three specific procedures present themselves:

A cease-and-desist procedure is provided by article XVII.1 of the Code of Economic Law for breaches of the provisions of all Belgian implementations of the Directives under scope. The procedure is handled by the President of the competent Business Court. Regarding breaches of the Code related to specific provisions on advertisement, in particular provisions stemming from Directives 2005/29 (Unfair Commercial Practices Directive) and 2006/114 (Misleading and Comparative Advertising Directive), the cease-and-desist procedure may only be aimed at the advertiser, provided he or she is a resident in Belgium or has appointed a representative in Belgium. Furthermore, for breaches of article 3(1), 6(1) and 6(2) of Directive 93/13 (Unfair Contract Terms), as implemented into Belgian law by articles VI.82-VI.89 and VI.37 of the Code of Economic Law, the cease-and-desist procedure may be aimed at multiple traders, respectively, at once.
The second procedure is the intra-Community cease-and-desist procedure as set out in article XVII.26 and following. This procedure is similar to the regular cease-and-desist procedure in nature but has a cross-border effect. The procedure may be initiated in case of a breach originating in Belgium but with consequences in another Member State. The Business Court of Brussels is exclusively competent to hear these claims.
The final procedure is the claim for collective redress as set out in article XVII.35 and following. This procedure is open to all contractual violations of businesses and violations of the Belgian legislations and European legislative measures listed in Article XVII.37 CEL. The aim of this procedure is to provide redress for a group of consumers who have suffered damage on account of the same cause. In that sense, it is akin to the class action lawsuit known to most common law legal systems. It applies a.o. to the Belgian implementation of all Directives under scope (see list in Article XVII.37 CEL) and is subject to the jurisdiction of the courts of Brussels. It 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 under article 1382 of the old Civil Code, anyone who has suffered damage has legal standing to initiate an action.
Regarding the aforementioned special procedures, legal standing is granted through specific provisions of the Code of Economic Law:
For the cease-and-desist procedure of article XVII.1, a claim may be filed by the (i) interested parties, (ii) competent minister or Director-General of the ADEI, (iii) a professional regulatory body, or a professional- or cross-sectoral association with legal personality, and (iv) an acknowledged consumer rights organisation.
The qualified entities in other Member States may file an intra-Community cease-and-desist procedure of article XVII.26. In Belgium, qualified entities are acknowledged consumer rights organisations.
The claim for collective redress may only be filed by a group representative as exhaustively defined in article XVII.39. These group representatives are: (i) an acknowledged consumer rights organisation with legal personality, (ii) a non-profit association with legal personality whose statutory purpose is directly correlated to the damage suffered by the group, and (iii) an autonomous public service but only for the purpose of representing the group in the pursuit of a settlement.

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 XVII.1, competitors may be considered interested parties and may therefore initiate proceedings.
Only qualified entities may file an intra-Community cease-and-desist claim. It is unlikely that competitors would be considered among them.
No, the claim for collective redress cannot be filed by a competitor.

Can the case be handled through an accelerated procedure?

The cease-and-desist procedure follows a procedure which is similar to the general interlocutory proceedings ("zoals in kort geding" - "comme en référé"). This means that the case can typically be decided in a short period of time, as the terms and the rules of procedure are similar to those of the general interlocutory proceedings. The short term is, however, not guaranteed, since urgency is not a requirement for filing a case under the cease-and-desist procedure. Although it is possible to use general interlocutory proceedings instead of the specific cease-and-desist procedure, it is generally advisable to the use cease-and-desist procedure, as the latter procedure was specifically introduced for countering infringements of the Code of Economic Law. Moreover, the cease-and-desist procedure is a procedure as to the merits.
The same reasoning applies to the intra-Community cease-and-desist procedure.
No accelerated procedure for the claim for collective redress is enshrined in the Code of Economic Law. That said, strict terms for the sequential steps in the procedure are included in the Code in order to expedite the procedure, both via the court or via settlement.

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

The Code of Economic Law does not contain any provision on this matter. The Belgian implementation of Directives 2008/122 (Timeshare Directive), 90/314 (Package Travel Directive), and 1999/44 (Consumer Sales Guarantees Directive), which are not included in the Code also do not provide any additional requirements.
Consequently, the general rules on evidence as laid down in the Belgian Judicial Code are applicable. According to article 871 of the Judicial Code, the court can order any party to disclose all evidence they dispose of. As of 1 November 2020, the new rules on evidence of Book 8 of the Civil Code apply, including specific evidence rules for businesses (Article 8.11 C.C.)

Are there specific procedural reliefs for consumers or consumer associations?

Neither the Code of Economic Law, nor the Judicial Code, nor the Belgian implementation of Directives 2008/122 (Timeshare Directive), 90/314 (Package Travel Directive), and 1999/44 (Consumer Sales Guarantees Directive) contain any provision on this matter.

III. SANCTIONS

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

The competent civil court can award damages in the framework of a claim for civil damages based on article 1382 of the old Belgian Civil Code. These damages, however, should be interpreted as an indemnifying measure rather than as a sanction. As is the case for most civil procedures under Belgian law, the Court can also order coercive civil fines, in order to ensure that the decision will be effectively complied with.
Furthermore, the competent court can also order the publication of the judgement (article XV.131). This procedure is only open for infringement of the provisions of the Code of Economic Law so that infringement of the provisions implementing Directives 2008/122 (Timeshare Directive), 90/314 (Package Travel Directive), and 1999/44 (Consumer Sales Guarantees Directive) cannot rely on this procedure.
Finally, where an unfair commercial practice leads to a contract being concluded with a consumer, that consumer can demand reimbursement of the sums paid within a reasonable period from the moment that the consumer was aware or should have been aware of the unfair commercial practice, without having to return the delivered product. (Article VI.38).
There is no link between the level of monetary fines and the trader's turnover.

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

Infringements of the Belgian implementations of the Directives under scope are punishable with several levels of criminal sanction. The criminal sanctions relevant to the Directives under scope include:
A criminal fine ranging from 26 to 10.000 EUR for the infringement of:
a) provisions on price indication (articles VI.3 until VI.7/2 of the Code of Economic Law);
b) provisions on naming, composition and labelling (articles VI.8 until VI.10 of the Code of Economic Law);
c) provisions on the indication of quantity (articles VI.11 until 16 of the Code of Economic Law);
d) provisions on distance contracts (articles VI.45 until VI.63 of the Code of Economic Law);
e) provisions on off-premises contracts (articles VI.64 until VI.74 of the Code of Economic Law); and
f) provisions on unfair commercial practices (articles VI.95, VI.100 and VI.103, excluding articles VI.100, 12°, 14°, 16°, and 17° and articles VI.103, 1°, 2°, 8° of the Code of Economic Law).
A criminal fine ranging from 250 to 10.000 EUR for the infringement of several provisions of the Act of 16 February 1994 (implementing Directive 90/314 (Package Travel)).
A criminal fine ranging from 1.000 to 20.000 EUR for:
a) not complying with a judgement handed down per the cease-and- desist procedure enshrined in the Act of 28 August 2011 (implementing Directive 2008 /122 (Timeshare));
b) purposefully hindering the persons named in article 27, §1 of the Act of 28 August 2011 in investigating and determining infringements of the Act; and
c) intentionally, in person or via an intermediary party, partially or completely destroying, hiding or tearing publication posters as imposed by the Act of 28 August 2011.

A criminal fine ranging from 500 to 20.000 EUR for the infringement of:
a) article 4 of the Act of 16 February 1994 in bad faith (implementing Directive 90/314 (Package Travel));
b) all provisions of the Act of 28 August 2011 (implementing Directive 2008/122 (Timeshare));

A criminal fine ranging from 26 to 25.000 EUR for the infringement of all provisions of book VI of the Code of Economic Law, excluding the infringements set out in articles XV.83, XV.85, XV.86, VI.104 and XV.126, where infringement is committed in bad faith;
A criminal fine ranging from 26 to 25.000 EUR for:
a) not complying with a judgement handed down per the cease-and- desist procedure enshrined in the Code of Economic Law; and
b) intentionally, in person or via an intermediary party, partially or completely destroying, hiding or tearing publication posters as imposed by the Code of Economic Law.

The above monetary fines apply to both natural persons and legal persons.
A criminal fine ranging from 500 to 100.000 EUR and an imprisonment of one year to five years for the infringement of certain provisions on misleading commercial practices, aggressive commercial practices, and pyramid schemes (articles VI.95, VI.100 and VI.103, excluding articles VI.100, 12°, 14°, 16°, and 17° and articles VI.103, 1°, 2°, 8° of the Code of Economic Law).
Finally, the competent court can also order the publication of the judgement (article XV.131 of the Code of Economic Law).
There is no link between the level of monetary fines and the trader's turnover.

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

The Code of Economic Law provides for several statutorily enshrined administrative sanctions. The competent authorities are the administrative bodies (in particular the ADEI) set out above and the sanctions include:

Per article XV.5, the competent authorities may seize goods which form the subject of an infringement of the Code, are used to infringe the Code, are used to create infringing goods, etc. This procedure is also open to infringements of the Act of 28 August 2011 (implementing Directive 2008/122 (Timeshare));
Per Article XV.5/1, the competent authorities may remove the content or block access to online interfaces, or they may order the display of a warning. They may moreover order providers of internet and hosting services to block, limit or deactivate online interfaces. Operators of the registers of internet domain names can also be ordered to delete a registered domain name. This procedure is also open to infringements of the Act of 28 August 2011 (implementing Directive 2008/122 (Timeshare));
Per article XV.14, an examining magistrate may order the communication technology user to cease the use of communication technology used for infringement. This procedure is also open to infringements of the Act of 28 August 2011 (implementing Directive 2008/122 (Timeshare));
Per articles XV.16 and XV.27/5, the competent authorities may order proof of the material veracity of the evidence which the trader offers pertaining to a commercial practice;
Per article XV.31, the competent authorities may issue a warning of a breach committed by a trader. This procedure is also open to infringements of the Act of 16 February 1994 (implementation of Directive 90/314 (Package Travel)); and
Per article XV.61, the competent authorities may engage in drafting a settlement for certain infringements. This procedure is also open to infringements of the Act of 16 February 1994 and the Act of 28 August 2011 (implementing Directive 2008/122 (Timeshare)).

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

A cease-and-desist procedure will in practice be initiated by a competitor or the public prosecutor, who are not a party to the individual transaction with the consumer. The individual transaction will therefore not be affected by a cease-and-desist decision, since a judicial decision only produces effects between the parties to the procedure, in this case, the vendor and his competitor or the public prosecutor. Nevertheless, a procedure can also be initiated by the consumer who contemplates that the contract is void because he/she has concluded the contract with a mistaken consent. He/she will thus allege that this mistaken consent originates from inter alia error, fraud or violence. If a competent court concludes that the vendor has committed an infringement of a provision of the Code of Economic Law, the consumer will be able to prove the origin of his /her mistaken consent and thus his contract will be declared void.

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, even when they did not initiate a cease-and-desist procedure before the Business Court. Such claim for damages is subject to the general rules of Belgian tort law (art. 1382 of the old Belgian Civil Code), which provide that an infringement of a legal provision (such as a provision of the Code of Economic Law, or any other Act that implements a Directive) constitutes a fault that can lead to damages, if a causal link with the loss is demonstrated. Although such claim for damages can be filed without having initiated the cease-and-desist procedure, it is nevertheless advisable to do so, because the Civil Court will be bound by the decision of the President of the Business Court. Hence, should the President of the Business Court find that the claimant has effectively suffered damages as a result of the infringement, the claimant will only have to prove the size of the damage when he/she files a claim for compensation before the Business Court.
Furthermore, consumers may also rely on the abovementioned claim for collective redress to achieve compensation. This is on the condition that the consumer has been included in the group of harmed consumers created specifically for the purpose of tallying the parties requesting compensation.

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

The President of the Business Court can for all infringements of provisions in the Code of Economic Law that form an implementation of the Directives under scope order that his judgement (or a summary thereof) be published either on the inside or outside of the establishment of the infringer or in the newspapers, at the expenses of the infringer. (Article XV.131). The ADEI does not have the power to order the publication of its decisions.

IV. OTHER TYPES OF ENFORCEMENT

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

Belgium has several self-regulatory enforcement systems. The most relevant example, the Jury for Ethical Practices regarding Advertising ("JEP") pertains to unfair commercial practices and advertising (Directives 2005/29 and 2006/122) (in Dutch: "Jury voor Ethische Praktijken inzake Reclame"; in French: "Jury d'Ethique Publicitaire"). The JEP is a self-regulatory body established by the Council for Advertising (in Dutch: "Raad voor de Reclame"; in French: "Conseil de la Publicité"). At the request of advertisers, it gives preliminary advice on intended advertisements and investigates complaints against actual advertisements, in which case the JEP will recommend the advertiser to either change or stop the advertisement. It also acts at the request of, among others, consumers. The body of rules that the JEP uses to evaluate the advertisements includes both traditional rules (including the Code of Economic Law), and norms of good taste and decency (e.g., ICC-code on advertising). When the advertiser refuses to comply with the recommendations of the JEP, the JEP will request the Belgian media (newspapers, magazines, TV stations, …) not to broadcast the challenged advertisement. Since the majority of the media is affiliated with the Council for Advertising (of which the JEP is its executive and supervising body), the JEP has important moral authority. In practice, advertisers will therefore often comply with the JEP's 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)?

Regarding the enforcement of the Belgian implementation of Directive 2005/29 (Unfair Commercial Practices Directive), the most relevant mediating services are the Ombudsman for Telecommunication and the Ombudsman of the Insurance Sector. Ombudsman for Telecommunication (Dutch: "Ombudsdienst voor Telecommunicatie"; French: "Service De Médiation Pour Les Télécommunications") The Ombudsman deals with complaints from consumers about their telecom provider. It formulates advice and tries to settle the dispute. In order to acquire a better understanding of the pending complaints, the Ombudsman can ask the telecom provider for any necessary information. Although the Ombudsman has important moral authority, it cannot impose any sanctions.

Ombudsman of the Insurance Sector (Dutch: "Ombudsman van de verzekeringen" / French: "Ombudsman des assurances") This private body investigates complaints from consumers against an insurance company; mediates in order to facilitate a settlement; decides on issues regarding the application of the section "consumers" in the code of conduct of insurance companies and intermediaries; and provides advice and recommendations. Although this Ombudsman has important moral authority, it cannot impose sanctions. The web site www.ombudsman.be contains a list of some mediating and ADR services.

The GR (http://www.clv-gr.be/) conciliation and arbitration schemes mentioned above also offer methods of alternative dispute resolution.

a) Conciliation scheme: the procedure can only be initiated if both parties agree to it. The GR provides a mediation platform between the parties which, provided neither party abandons the procedure before completion, results in a settlement (in Dutch: "Dading"; in French: "Transaction"). This settlement may then be ratified by the court, which grants it res judicata and allows it to be enforced as a traditional judgement. The GR has no authority to impose sanctions of any kind and remains neutral throughout the procedure.

b) Arbitration scheme: a retailer or organiser may never refuse the arbitration procedure for claims below 1.250 EUR. A consumer may at all times refuse to engage in arbitration in the capacity of defendant. If a party does not adhere to the outcome of the arbiter's ruling, a court order may be obtained in a simple procedure to give that arbiter's ruling power of res judicata and allows it to be enforced as a traditional judgement.

Collective redress settlement scheme: upon engagement of the procedure, a group of harmed consumers is formed on the basis of different criteria depending on whether or not the consumers in question are habitual residents in Belgium. That group is then designated a representative. Upon the filing of the claim by the group representative, the admissibility of the claim is verified. Upon successful conclusion of the negotiations, the agreement is ratified by the court and granted power of res judicata which allows it to be enforced as a traditional judgement.

Finally, the Consumer Mediation Service (in Dutch: "Consumentenombudsdienst"; in French: "Le Service de Médiation pour le Consommateur) provides a catch-all Ombuds service for all consumer disputes with traders. Where another, similar service takes precedence over the Consumer Mediation Service, it will transfer the file to that service. Its competences rangs from providing information on consumer rights and available legal options for consumers, to providing a platform for out-of-court settlement.

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