IRELAND

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I. ADMINISTRATIVE ENFORCEMENT

Which administrative mechanisms are available to enforce the Directives?

Directive 93/13/EEC (Unfair Terms in Consumer Contracts) was implemented by the European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995 and 2000 (“1995 and 2000 Regulations”) (S.I. No. 27/1995 and S.I. No. 307/2000).

Directive 98/6/EC (Price Indication) was implemented by the European Communities (Requirements to Indicate Product Prices) Regulations 2002 (the “2002 Regulations”) (S.I. No. 639/2002).

Directive 1999/44/EC (Consumer Sales and Guarantees) was implemented by the European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003 (“2003 Regulations”) (S.I. No. 11/2003).

Directive 2005/29/EC (The Unfair Commercial Practices Directive) was implemented by the Consumer Protection Act 2007 (“2007 Act”).

Directive 2006/114/EC (Misleading and Comparative Advertising) was implemented by the European Communities (Misleading and Comparative Marketing Communications) Regulations 2007 (the “2007 Regulations”) (S.I. No. 774/2007).

Directive 2008/122/EC was implemented by European Union (Protection of Consumers in respect of Timeshare, Long-term Holiday Product, Resale and Exchange Contracts) Regulations 2011 as amended (the “2011 Regulations, as amended”) (S.I. No. 73/2011 and S.I. No. 400/2014).

Directive 2009/22 (Injunctions Directive) was implemented by the European Communities (Court Orders for the Protection of the Consumer Interest) Regulations 2010 (“the 2010 Regulations”) (S.I. No. 555/2010).

Directive 2011/83/EU (Consumer Rights) was implemented by the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (“2013 Regulations”) (S.I. No. 484/2013).

Directive 2015/2302 (Package Travel) was implemented by the European Union (Package Travel and Linked Travel Arrangement) Regulations 2019 (“the 2019 Regulations”) (S.I. No. 80/2019) amending the Package Holidays and Travel Trade Act 1995 (the 1995 Act).

Administrative mechanisms to enforce consumer protection measures rest mainly with the Competition and Consumer Protection Commission (“CCPC”). The CCPC is an independent statutory body with a dual mandate to protect competition and enforce consumer protection law in Ireland. It was established on 31 October 2014 following the amalgamation of the National Consumer Agency and the Competition Authority. It is responsible for enforcing a wide range of legislation (including that listed above) aimed at protecting consumers.

The CCPC has a range of powers to help achieve compliance with consumer protection law pursuant to the Consumer Protection Act 2007 (the “2007 Act”) and the Competition and Consumer Protection Act 2014 (the “CCPA 2014”). As well as enforcement through court action (such as prohibition orders and prosecutions for various criminal offences), the CCPC has a series of administrative mechanisms available to it including:

powers of investigation

power to accept Undertakings

power to issue Compliance Notices

power to issue Fixed Payment Notices

power to maintain and publish a Consumer Protection List

Relevant information such as Compliance Notices (issued against an entity who is deemed to have committed a 'prohibited practice' or otherwise contravened consumer protection law), as well as the Consumer Protection List (which records the names, addresses and other details of entities against which enforcement action has been taken by the CCPC) and further details of engagement with traders and administrative action can be found in the Annual Reports available at www.ccpc.ie

The European Consumer Centre (“ECC”) Ireland deals with consumer complaints in a cross-border context. It cooperates with other EU networks and national consumer organisations and enforcement agencies e.g., the CCPC, the Financial Services and Pensions Ombudsman, and the Consumers’ Association of Ireland.

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

The CCPC allows administrative complaints about breaches of consumer protection law to be filed by any person. This means a natural person (whether in the State or not) who is acting for purposes unrelated to the person’s trade, business or profession.

The CCPC can carry out an investigation, either on its own initiative or in response to a complaint made to it by a consumer or consumers, into any suspected breach of the relevant statutory provisions that may be occurring or has occurred.

There is currently no procedure in Ireland for the taking of class actions seeking damages. There have been calls for reform to facilitate the taking of collective /multi-party actions in Ireland, including in a report by the Law Reform Commission published in 2005 and the Review of the Administration of Civil Justice Report in 2020. At the time of writing, the Department of Enterprise, Trade and Employment (the relevant central government ministry) has issued a consultation paper seeking views on the transposition of Directive 2020/1828 on representative actions for the protection of the collective interests of consumers which will require a form of collective redress procedure to be available by 25 June 2023.

Do any specific procedural requirements apply to filing administrative complaints?

A consumer is encouraged to give the business that has allegedly breached their consumer rights an opportunity to remedy the situation before making a complaint to the CCPC. Guidance on making a complaint to business and template letters of complaint are available on the CCPC website.

A consumer can report a business to the CCPC by completing the contact form on the website and supplying the relevant details. When a consumer emails through the website contact page, they will receive an email acknowledgement and a copy of the email.

A consumer may also complain by letter, which will be acknowledged within five working days. A full response should be provided within 15 days. Other avenues of complaint include via phone and social media.

If a complaint involves an amount up to €2,000, the CCPC suggests bringing the matter to court through the Small Claims process.

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

The CCPA 2014 empowers the CCPC to carry out an investigation in response to a complaint made to it by any person. However, the CCPC is not an ombudsman and it has a discretion in relation to taking action following a complaint which it exercises based on prioritisation principles, namely:
Level of economic and/or physical harm;
Likely impact of the CCPC's action;
Strategic significance;
Risks, resources and costs.
Details of investigations and the number of fines, penalties, and compensation orders, etc. issued can be found in the CCPC Annual Reports.

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

The CCPC may summon and examine witnesses on oath and require any such witness to produce to the Commission any books, documents and records in his or her power or control. It can also require any person or undertaking to provide it with written information necessary to enable it to carry out its functions.

II. ENFORCEMENT THROUGH COURT ACTION

Which court actions are available to enforce the Directives?

A variety of different courts actions are available to enforce the Directives.
In general, consumers can take court action against a trader by bringing a claim for €2,000 or less through the Small Claims procedure. A claim can be brought by a consumer making a claim for goods and services bought for private use, or a business making a claim for goods or services bought for business use.
Under the 1995 and 2000 Regulations (unfair terms), the CCPC or any consumer organisation can apply to the High Court for an order prohibiting the use of any unfair terms.
Under the 2002 Regulations (price indications) the CCPC can apply to the Circuit Court for an order ensuring compliance with the Regulations.
Under the 2007 Act, any person (including the CCPC) can apply to the Circuit Court or High Court for an order prohibiting a trader or person from committing or engaging in a prohibited act or practice. A consumer who is aggrieved by a prohibited act or practice has a right of action for relief by way of damages, including exemplary damages, against the trader or body corporate, director, manager, secretary or other officer of the trader, or a person who purported to act in any such capacity, who authorised or consented to the doing of the act or the engaging in of the practice.
Under the 2010 Regulations (injunctions) a 'qualified entity' may apply to the Circuit Court for an injunction protecting the collective interest of consumers.
In addition, the CCPC has powers to prosecute minor criminal offences on a summary basis under consumer protection legislation. More serious offences are prosecuted by the Director of Public Prosecutions (DPP) on indictment.

Who can start a court action?

Depending on the particular court action, different persons can start proceedings including the CCPC, other consumer organisations, consumers or other persons (including traders).
An action can be initiated by a consumer in the Small Claims Court.
The CCPC or any consumer organisation can seek an order prohibiting the use of any unfair terms under the 1995 and 2000 Regulations.
The CCPC can seek compliance under the 2002 Regulations.
The CCPC, a trader or other person can apply to the Circuit Court or the High Court under the 2007 Regulations.
A 'qualified entity' may apply to the Circuit Court for an injunction under the 2010 Regulations.
Any person, including the CCPC can apply for civil relief by way of prohibition orders.
Prosecution of minor offences can be brought by the CCPC on a summary basis, while more serious offences are prosecuted by the Director of Public Prosecutions (DPP).

Can court actions be initiated by competitors?

"A trader or other person" can make an application under the 2007 Regulations, and "any person" can make an application under the Consumer Protection Act 2007 ("CPA 2007"). This would include a competitor who has suffered damage and therefore has legal standing.
However, if the applicant other than the CCPC seeks civil relief by way of prohibition order, the court may not make the order unless the CCPC has been afforded an opportunity to be heard and adduce evidence.

Can the case be handled through an accelerated procedure?

Member States can make provision for an accelerated procedure in Directive 2006/114/EC and 2005/29/EC, but this option was not availed of in the implementation of the Directives into Irish law. There is no accelerated procedure in the 2007 Regulations or in the 2007 Act.
There is no provision for accelerated procedure under Directives, 93/13/EEC, 98/6/EC, 1999/44/EC; 2008/122/EC, Directive 2009/22; 2011/83/EU and 2015/2302

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

Implementing national laws do not contain any provision on this matter.
If the applicant for an order under the 2007 Act is not the CCPC, the court may not make the order unless the CCPC has been afforded an opportunity to be heard and adduce evidence.

Are there specific procedural reliefs for consumers or consumer associations?

Neither the Directives nor the implementing national laws 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 different measures which transpose the Directives utilise a range of civil sanctions and remedies, outlined below, per Directive.
Re Directive 93/13 on unfair terms: under the 1995 Regulations and the 2000 Regulations:

an unfair term is void and not enforceable by a seller/supplier against the consumer, and
the CCPC or another consumer organisation can apply to the High Court for an order prohibiting the use of an unfair term(s).
Re Directive 86/6 on price indications: under the 2002 Regulations:
where, in the opinion of the CCPC, a trader is contravening or has contravened these Regulations, the CCPC can apply to the Circuit Court for an order requiring the trader to comply with the Regulations. It is not necessary for the CCPC to prove actual loss or damage or recklessness or negligence on the part of the trader. The onus of proving compliance is on the trader.
Re Directive 1999/44 on consumer sales: under the 2003 Regulations:
the seller is liable to the consumer for a lack of conformity, and
consumers have a right to repair or replacement, or price reduction or recission, against the seller where goods do not conform with the contract.
Re Directive 2005/29 on unfair commercial practices: under the 2007 Act
civil relief by way of a Prohibition Order is available from the Circuit Court or High Court for any person, including the CCPC, prohibiting a trader or person from committing or engaging in a prohibited act or practice. If appropriate, the court may make an order without proof of any actual loss or damage or of any intention or negligence on the part of the trader. In making a prohibition order, the Court may impose terms or conditions in the order that the Court considers appropriate, including a requirement that the trader publish a corrective statement, at the trader's own expense and in any manner the Court considers appropriate, in respect of matters the subject of the order;
where the CCPC believes that a trader is committing, has committed or will commit a prohibited act or practice, the CCPC may accept a written Undertaking from the trader in a form and which contains terms and conditions which the CCPC determines appropriate. For example, the Undertaking can include a commitment to compensate consumers or a class of consumers, including reimbursing any money or returning any other property; or a commitment to publish, at the trader's expense, an advertisement containing a corrective statement relating to the prohibited act or practice. The CCPC is required to publish such Undertakings;
a consumer who is aggrieved by a prohibited act or practice has a right of action for damages, including exemplary damages, against a trader who commits a prohibited act or practice. An action under this section may be brought in the District Court, the Circuit Court or the High Court depending on the amount of damages being sought;
a Compliance Notice can be issued by an authorised officer of the CCPC where a person is committing or has committed a prohibited act or practice, directing that the person remedy the contravention, by a certain date. A right of appeal against the Notice before the District Court exists. Otherwise, failure to comply with a Compliance Notice is a criminal offence.
Re Directive 2006/114 on misleading advertising: under the 2007 Regulations
a trader or other person, including a consumer, on giving notice to the relevant trader, can apply to the Circuit Court or the High Court for an order prohibiting a trader from engaging in a misleading marketing communication or a prohibited comparative marketing communication. If the truth of a factual claim in a representation is an issue, the burden of proof rests with the trader against whom the order is sought to prove, on the balance of probabilities, that the representation is true; otherwise, the representation is presumed to be untrue. If appropriate, Court may make a Prohibition Order without proof of any actual loss or damage on the part of the person making the application, or any intention or negligence on the part of the trader against whom the order is sought. In making a Prohibition Order, the Court may impose terms or conditions in the order that the Court considers appropriate, including a requirement that the trader publish a corrective statement, at the trader's own expense and in any manner the Court considers appropriate.
Re Directive 2008/122 on timeshare etc: under the 2011 and 2014 Regulations:
a contract is not enforceable by a trader against a consumer where the trader has breached his obligations in relation to advertising under the Regulations; and
a consumer has a right to withdraw from the contract without giving reason before the expiry of the withdraw period.
Re Directive 2009/22 on injunctions; under the 2010 Regulations:
a 'qualified entity' may apply to the Circuit Court for an order/injunction protecting the collective interest of consumers. Where the Circuit Court grants such an order, it must specify the day by which compliance is required; a sum to be paid into the Central Fund for each day of non-compliance after the day when compliance is required; and it may provide for other matters including, if appropriate, the publication of the order;
where a person against whom an order/injunction is made does not cease, or commits, the infringement concerned, and does not pay into the Central Fund any relevant sums required by the order, the Minister may recover any such sum not paid as a simple contract debt in any court of competent jurisdiction;
where appropriate, the Circuit Court may make an interim order.
Re Directive 2011/83 on consumer rights: under the 2013 Regulations:
where information about additional freight, delivery or postal charges, any other costs, and the cost of return is not provided in relation to distance contracts, as required by the Regulations, the consumer is not liable for those costs;
where additional information requirements for distance contracts concluded by electronic means is not provided, the contract does not bind the consumer;
consumers have a right to cancel / withdraw from distance and off-premises contracts without providing a reason and without penalty, within the cancellation /withdrawal period;
where fees for the use of means of payment are excessive, the fee is unenforceable to the extent of the excess charged. The burden of proof rests with the trader to show that a fee charged does not exceed the cost borne by the trader for the use of that means of payment;
where a trader fails to seek the consumer's express consent to any additional payment, the trader must reimburse the payment to the consumer; and a failure to do so is actionable by the consumer as a breach of statutory duty; and any term of a contract which requires the consumer to make an additional payment is unenforceable;
where a trader operates a telephone line for the purpose of permitting consumers to contact the trader about a contract concluded with the trader, and where calls by consumers to that line are charged at more than the basic rate, the trader must reimburse the consumer to the extent of the excess charged, and a failure to do so is actionable by the consumer as a breach of statutory duty; and any term of a contract which requires the consumer to pay more than the basic rate is unenforceable;
more generally, under the 2007 Act, as amended, civil remedies and sanctions, such as prohibition orders, undertakings, claims to damages and compliances notices, may be sought in relation to breaches of the 2013 Regulations.
Re Directive 2015/2301 on package travel etc: under the 1995 Act and the 2019 Regulations:
an organiser is liable for providing misleading brochure information and must compensate the consumer for any damage caused to the consumer as a direct consequence of and attributable to the consumer's reliance on information which is false or misleading;
an organiser is liable for the performance of travel services and the organiser must remedy any lack of conformity. Where the organiser fails to remedy the lack of conformity within a reasonable period specified by the traveller, the traveller may do so and may request, from the organiser, reimbursement of the expenses which were necessary to remedy the lack of conformity and which must be paid by the organiser;

a traveller is entitled to an appropriate price reduction from an organiser for any period during which there was lack of conformity;
a traveller is entitled to receive, without undue delay, appropriate compensation from an organiser for any damage which the traveller sustains as a result of any lack of conformity.

What are the possible administrative sanctions for the infringement of the Directives' provisions?
Under the 2007 Act, the CCPC has many enforcement tools as mentioned above, including undertakings, compliance notices, fixed payment notices and publication in the Consumer Protection List.
Where the CCPC believes that a trader is committing, has committed or will commit a prohibited act or practice, the CCPC may accept a written Undertaking from the trader in a form and which contains terms and conditions which the CCPC determines appropriate. For example, the Undertaking can include a commitment to compensate consumers or a class of consumers, including reimbursing any money or returning any other property.
Fixed Payment Notices are issued in relation to breaches of prices legislation. Where a CCPC authorised officer has reasonable grounds for believing that a person is committing, or has committed, a pricing offence he may serve a Fixed Payment Notice on the person. The Notice must be in a prescribed form, including that a prosecution for the offence will not be instituted if, during the period of 28 days beginning on the date of the Notice, the person pays the amount of €300 to the CCPC.
Other fines and penalties are typically issued by a court.

What are the contractual consequences of an administrative order or a judgment on an individual transaction under the Directives?
Generally, individual contracts are not affected as a result of administrative orders.
Re Directive 93/13 on unfair terms: under the 1995 Regulations and the 2000 Regulations: an application by the CCPC or other consumer organisation can be made to the High Court for an order prohibiting an unfair term; an unfair term is void and not enforceable by a seller/supplier against the consumer, although the unfair terms can be severed from the underlying contract.

Can authorities order the trader to compensate consumers who have suffered harm as a result of the infringement?
Under the 2007 Act:
a Prohibition Order may be available from the Circuit Court or the High Court prohibiting a trader or person from committing or engaging in a prohibited act or practice and the Court may impose any terms or conditions in the order that the Court considers appropriate;
where the CCPC believes that a trader is committing, has committed or will commit a prohibited act or practice, the CCPC may accept a written Undertaking from the trader in a form and which contains terms and conditions which the CCPC determines appropriate. For example, the Undertaking can include a commitment to compensate consumers or a class of consumers, including reimbursing any money or returning any other property;
a convicted person may be liable to compensate consumers for loss or damage.
Under the 2007 Regulations:
in an order prohibiting a trader from engaging in a misleading marketing communication or a prohibited comparative marketing communication, the Court may impose terms or conditions in the order that the Court considers appropriate.

Can the administrative authorities or the courts require the publication of their decisions?
Under the 2007 Act
the CCPC can seek a Prohibition Order and the Circuit Court or High Court can impose terms or conditions in the order that the Court considers appropriate, including a requirement that the trader publish a corrective statement, at the trader's own expense and in any manner the Court considers appropriate, in respect of the subject of the order;
the CCPC can accept a written Undertaking from a trader in a form and which contains terms and conditions which the CCPC determines appropriate. For example, the Undertaking can include a commitment to publish, at the trader's expense, an advertisement containing a corrective statement relating to the prohibited act or practice. The CCPC is required to publish such Undertakings;
a convicted person may be ordered to publish a corrective statement.
Under the 2007 Regulations
a trader or other person, including a consumer, on giving notice to the relevant trader, can apply to the Circuit Court or the High Court for an order prohibiting a trader from engaging in a misleading marketing communication or a prohibited comparative marketing communication. The Court may impose terms or conditions in the order that the Court considers appropriate, including a requirement that the trader publish a corrective statement, at the trader's own expense and in any manner the Court considers appropriate.
Under the 2010 Regulations:
a 'qualified entity' may apply to the Circuit Court for an order/injunction protecting the collective interest of consumers. Where the Circuit Court grants such an order, it may provide for the publication of the order.
The CCPC publish details of enforcement actions on the Consumer Protection List and in their Annual Reports.
Significant decisions of Higher Courts (High Court; Court of Appeal and Supreme Court) are routinely published in Law Reports and online on a number of free legal databases (www.courts.ie and www.bailii.org). However, decision from lowers courts (courts of local and limited jurisdiction, (that is the District Court and the Circuit Court) where the majority of consumer disputes are heard are not routinely published.

IV. OTHER TYPES OF ENFORCEMENT

Are there any self- regulatory enforcement systems in your jurisdiction that deal with aspects of the Directives?
There are a number of self-regulatory systems in operation in Ireland, namely, systems operated by the Advertising Standards Authority for Ireland; the Direct Selling Association of Ireland; and the Society of the Irish Motor Industry.
1. The work of the Advertising Standards Authority for Ireland (ASAI) relates to Directives 2005/29 on unfair commercial practices and Directive 2006/114 on misleading advertising
The ASAI: see further www.asai.ie is an independent self-regulatory body set up and financed by the advertising industry. Self-regulation means the adoption by the advertising industry of standards drawn up by and on behalf of all advertising interests. It involves the enforcement of those standards through the commitment and cooperation of advertisers, agencies and media.
The rules are set out in the ASAI's "Code of Standards for Advertising and Marketing Communications in Ireland" ("ASAI Code" – 7th ed., 2016). The aim of the ASAI Code is to regulate commercial marketing communications in the interest of consumers ensuring, so far as possible, that all marketing communications are prepared with a sense of responsibility both to the consumer and to society. Members of the ASAI are required to abide by the ASAI

Code and not to publish an advertisement or conduct a promotion which contravenes ASAI Code rules. Case Reports on complaints investigated by the ASAI are released in periodic Complaints Bulletins during the year.
2. In relation to distance selling and Directive 2011/83, the Direct Selling Association of Ireland (DSAI: see further www.dsai.ie) has a Consumer Code of Practice which is binding for members and offers a consumer complaint resolution service, for more simple complaints, with the assistance of an Independent Code Administrator.
3. In relation to Directives 2005/29 on unfair commercial practices; Directive 2006/114 on misleading advertising conformity of goods and Directive 1999/44 on consumer goods, the Society of the Irish Motor Industry (SIMI: www.simi.ie) is the representative voice for the motor industry in Ireland, including retailers and service providers. There are over 1200 members who are required to follow the SIMI Code of Ethics, and the SIMI also offers a Consumer Complaints Service.

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 addition, to the self-regulatory models listed above, the EU Directive 2013/11/EU on alternative dispute resolution for consumer disputes was transposed into Irish law by the European Union (Alternative Dispute Resolution for Consumer Disputes) Regulations 2015 (SI 343/2015). Under the Regulations the CCPC has been appointed as the competent authority to oversee and regulate the functioning of alternative dispute resolution entities established in Ireland. Currently, four ADR entities have been authorised by the CCPC, namely:
the Commission for Energy Regulation;
Financial Services and Pensions Ombudsman;
Net Neutral EU Ltd; and
the Royal Institute of the Architects of Ireland.
Some consumer contracts will bind a consumer to pursue their case through arbitration. Arbitration bodies have the power to make legally binding decisions. A decision may place a legal requirement on the retailer to repay the money, for example. If the outcome of the alternative dispute resolution is legally binding on either party, the matter may not be pursued in court.
Arbitration may be arranged by the Chartered Institute Of Arbitrators - Irish Branch on behalf of tour operators / organisers.

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