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Enforcement

ITALY

Enforcement  (157 Kb) 

I. ADMINISTRATIVE ENFORCEMENT

Which administrative mechanisms are available to enforce the Directives?

In Italy, Directives 93/13 (Unfair Contract Terms), 98/06 (Price Indication), 1999/44 (Consumer Sales and Guarantees), 2005/29 (Unfair Commercial Practices), 2008/122 (Timeshare), 2009/22 (Injunctions) and 2011/83 (Consumer Rights) are implemented by the Legislative Decree 6 September 2005 no. 206 ("Consumer Code").

With regard to Directives 1999/44 (Consumer Sales and Guarantees) and 2008/122 (Timeshare), the administrative enforcement of the section of the Consumer Code implementing these Directives, by virtue of article 144 bis, is handled by the Economic Development Ministry, that operates as the competent authority and exercises the relevant investigating and enforcement powers in accordance with the Regulation no. 200/2004/EC on cooperation between national authorities responsible for the enforcement of consumer protection laws.

With regard to Directive 98/06 (Price Indication), the competent authority is the mayor of the city in which the infringement occurred, according to article 22, paragraph 3 of the Legislative Decree 31 March 1998, no. 114 (referred to in article 17 of the Consumer Code).

With regard to Directives 2005/29 (Unfair Commercial Practices), 93/13 (Unfair Contract Terms), 2011/83 (Consumer Rights) and 2008/122 (Timeshare), the competent authority for the enforcement of the Directive is the Italian Competition Authority, (Autorità Garante della Concorrenza e del Mercato, "AGCM"), an administrative independent authority that is also competent for receiving administrative complaints.

Directive 90/314 (Package Travel Directive) is implemented by Annex A of the Legislative Decree 23 May 2011, no. 79, also known as Code of Tourism.

Directive 2006/114 (Misleading and Comparative Advertising) is implemented by Legislative Decree 2 August 2007, no. 145. The competent authority for the enforcement of the Directive is the AGCM. The Administrative Court has the sole jurisdiction against the AGCM's decisions.

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

The AGCM allows administrative complaints to be filed by every natural or legal person who has interest.

Investigations can be initiated ex officio. Procedures are set out in the AGCM's Resolution 1 April 2015, no. 25411.

Do any specific procedural requirements apply to filing administrative complaints?

A complaint can be filed before the AGCM in three ways: (1) via mail by submitting the complaint to the following address: Autorità Garante della Concorrenza e del Mercato, Piazza Giuseppe Verdi 6/A – 00198 Roma; (2) via fax by submitting the complaint to the fax no. 06 85821256; (3) by submitting an online form on the AGCM's website www.agcm.it.

The submission of the complaint in case of misleading and comparative advertising and unfair practices must contain the information listed in article 4 of the AGCM's Resolution 1 April 2015, no. 25411.

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

There is no general obligation on the AGCM to investigate the complaint.

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

Failure to provide information and/or the documents requested by the AGCM will result in sanctions provided for in article 27, paragraph 4 of the Consumer Code. In particular, according to article 27, once the AGCM has started its investigation, (i) should the party not comply with the AGCM's request of providing information and documents, an administrative sanction of between EUR 2,000.00 and EUR 20,000.00 would apply, while (ii) should the information provided be untruthful, an administrative sanction of between EUR 4,000.00 and EUR 40,000.00 would apply.

II. ENFORCEMENT THROUGH COURT ACTION

Which court actions are available to enforce the Directives?

The AGCM's decisions may be challenged before the competent Civil Court.

In relation to Directive 93/13 (Unfair Contract Terms), the ordinary judge is the sole authority which is competent to declare the nullity of unfair contractual terms.

In relation to Directive 2006/114 (Misleading and Comparative Advertising), Regional Administrative Courts have sole jurisdiction over complaints concerning AGCM's decisions.

Who can start a court action?

Every person who has interest.

Consumer associations registered in the National List before the Economic Development Ministry can also start a court action for the protection of the collective interests of the consumers (articles 137-140 of the Consumer Code), thus requesting the Court to:

- a) restrict acts and behaviours harmful for consumers' interests;
- b) implement appropriate measures to rectify or delete the ascertained infringements' negative effects;
- c) order the publication of the measure on national or local newspapers.

Consumers and users rights to ascertain liabilities and obtain compensation of damages as well as collective interests are enforceable also through a class action as per article 140 bis of the Consumer Code, which may be started by any authorised member of the association involved.

Can court actions be initiated by competitors?

Yes, if they are able to prove interest in the action.

Can the case be handled through an accelerated procedure?

In case of urgency, consumers, as well as consumers associations and traders associations, may request Civil Courts to adopt injunctions to inhibit the performance of unlawful behaviour by the trader. The judge may impose the publication of the inhibitory measure on one or more newspapers.

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

Neither the Consumer Code nor the Legislative Decree 145/2007 (implementing Directive 2006/114 and the Annex A to the Legislative Decree 79/2011 (implementing Directive 1990/314) contain any specific provision on this issue.

Are there specific procedural reliefs for consumers or consumer associations?

Article 27 Consumer Code

III. SANCTIONS

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

Neither the Consumer Code, nor the Legislative Decree 145/2007 (implementing Directive 2006/114 and the Annex A to the Legislative Decree 79/2011 (implementing Directive 1990/314) contain any general provision on this issue.

Pursuant to article 1453 of the Italian Civil Code in contracts with mutual obligations, if a party does not perform its obligations, the other may either (i) ask the party to comply with its obligation or, in alternative, (ii) terminate the contract without prejudice to the right to request compensation ex article 1223 of the Italian Civil Code. Article 1223 of the Italian Civil Code specifically provides that compensation for failure or delay to perform one's obligations must include the resulting damage (danno emergente) as well as the loss of profits (lucro cessante) suffered by the creditor provided that they are immediate and direct consequence of the other party's failure or delay to perform its obligations. According to article 1226 of the Civil Code, if the damage cannot be proved in its precise amount, it is determined by the civil judge on an equitable basis.

According to article 36 of the Consumer Code, implementing article 6 paragraph 1 of Directive 93/13, in case of unfair terms used in a contract concluded with a consumer by a seller or supplier, any term which is found to be unfair by the Civil Court under articles 33 and 34 would be void, while the rest of the contract remains valid.

Article 130 of the Consumer Code, implementing article 3 of Directive 1999/44 establishes the possibility for the consumer to have the goods brought into conformity, free of charge, by repair or replacement or to have an appropriate reduction made in the price or the contract rescinded with regard to those goods in the case of a lack of conformity.

According to article 27, paragraph 15 of the Consumer Code, in relation to violations of Directive 2005/29, the subject who suffered due to an unfair competition act may bring an action before the civil judge according to article 2598 of the Civil Code to ascertain with a decision the act of unfair competition, obtain from the judge the inhibition of its continuation, and ask for compensation ex article 2043 of the Italian Civil Code for non-contractual liability if the act is performed with intentional fault or misconduct.

According to article 78 of the Consumer Code, implementing article 12 of Directive 2008/122, contractual clauses or additional agreements by which the consumer accepts to waive the rights conferred to him/her or limit some of the trader's responsibilities are invalid. The decision on the validity of the clause is determined by the civil judge.

Article 47 of the Tourism Code (implementing Directive 90/314) establishes that in case of failure to perform or improperly perform the services involved in the package which may be considered significant according to article 1455 of the Italian Civil Code, the tourist may request compensation for the damages suffered, amount which shall be determined taking into consideration the period of vacation that he/she was not able to enjoy and the unrepeatability of the opportunity he/she has missed, unless it is possible to terminate the contract.

No difference in the amount of the monetary fines is made regardless of whether the trader who acted in breach of the Directives' provisions is a natural or a legal person. Article 112 Consumer Code.

The amount of the monetary fines may vary depending on the trader's economic situation.

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

Neither the Consumer Code, nor the Legislative Decree 145/2007 (implementing Directive 2006/114 and the Annex A to the Legislative Decree 79/2011 (implementing Directive 1990/314) contain any specific provision on this issue.

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

Administrative fines are generally applied by the AGCM.

With regard to Directive 2005/29 (Unfair Commercial Practices), the Legislative Decree no. 146/2007 amending the Consumer Code provides that unfair commercial practices shall be punished by an administrative fine of between EUR 5,000.00 and EUR 5,000,000.00 depending on the gravity and the duration of the breach. Should the unfair commercial practice consist (i) in the entrepreneur's failure to provide information with respect to products likely to endanger consumers' health and safety so as to induce consumers to neglect the normal rules of prudence and vigilance; or (ii) in a conduct which is likely to affect children and adolescents and even indirectly threaten their safety, the administrative fine may not be lower than EUR 50,000.00.

With regard to Directives 93/13 (Unfair Contract Terms) once the AGCM has started its investigation, should the party not comply with the AGCM's request of providing information and documents, an administrative sanction of between EUR 2,000.00 and EUR 20,000.00 would apply. Should said information be untruthful, an administrative sanction of between EUR 4,000.00 and EUR 40,000.00 would apply. Should the party contravene to the order by the AGCM to publish the AGCM's decision on the unfairness of the clause on his website and other media, an administrative fine of between EUR 5,000.00 and EUR 50,000.00 would apply.

With regard to Directive 2008/122, the Consumer Code provides that the breach of the provisions on pre-contractual information, contract's requirements, surety obligations and so on (art. 70, para 1 and 2, 71, 72, 72-bis, 75, 76 and 77 of the Consumer Code) would result in the application of an administrative fine of between EUR 1,000.00 and EUR 5,000.00 for each breach. An ancillary sanction consisting in the suspension of the activity exercise from 30 days to 6 months may apply in case of repeated breaches.

According to article 17 of the Consumer Code, implementing article 8 of Directive 98/06, anyone neglecting to indicate the unit price or failing to indicate it in accordance with the relevant provisions of the Consumer Code shall be punished by an administrative sanction of between EUR 516,45 and EUR 3,098,74, in accordance with the procedures set out therein.

With regard to Directive 1999/44 (Consumer Rights), the Consumer Code provides that, should the seller mislead the consumer with respect to the existence or modalities of exercise of the legal compliance guarantee, or hinders the exercise, the AGCM may intervene by imposing the cessation of the misleading conduct and sanctioning the seller up to a maximum of EUR 5,000,000.00.

The sanctions mentioned above apply also in case of breaches of provisions on distance selling as amended after the implementation of Directive 2011/83 (Consumer Rights) into national law.

According to art. 27, paragraph 13 of the Consumer Code, that applies where applicable for violations of Directives 93/13 (Unfair Contract Terms), 98/06 (Price Indication), 1999/44 (Consumer Sales and Guarantees), 2005/29 (Unfair Commercial Practices), 2008/122 (Timeshare), 2009/22 (Injunctions) and 2011/83 (Consumer Rights), 2006/114 (Misleading and Comparative Advertising) the specific criteria for determining the imposition of a monetary fine are set in Law of 24 December 1981, no. 689. In particular, article 11 of Law no. 689/1981 establishes that in determining the administrative monetary fines set by law between a minimum and a maximum amount, as well as in determining the application of ancillary sanctions, the AGCM needs to take in consideration the gravity of the infringement, the conducts performed by the transgressor for the purposes of removing or limiting the consequences of the infringement, as well as his/her personality and economic conditions.

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

With regard to Directive 93/13 (Unfair Contract Terms), the AGCM and the Civil Court may declare the unfairness of the contractual terms. The Civil Court is the only competent for both compensation and issues on the validity of such clauses. The Regional Administrative Court is competent against the AGCM's decision, which decisions may be appealed before the State's Council. The statement of unfairness of the clause provides its invalidity and its removal from the contract. The rest of the contract will remain valid.

As a consequence of the breach of the Consumer Code, the Tourism Code and the Legislative Decree 145/2007, the consumer may request the Civil Court to determine the termination of the contract in case of its breach.

The AGCM's decisions will not result in the invalidity of the contract.

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

The Civil Court may order to the trader to compensate consumers who have suffered harm as a result of the infringement.

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

With respect to Directive 2006/114 (Misleading and comparative advertising) the AGCM may obtain from the advertiser responsible for unlawful advertising a commitment to end its unlawful behaviour and may also impose the publication of said commitment. The AGCM may also impose the publication of its measure with which it prohibits the further disclosure of the unlawful advertising.

With respect to Directive 93/13 (Unfair Contract Terms), the AGCM may order the publication of the measure with which it declares the unfairness of the contract clauses, via the AGCM's website or any other appropriate instrument.

With regard to Directives 93/13 (Unfair Contract Terms), 2011/83 (Consumer Rights) and 2008/122 (Timeshare), the AGCM may obtain from the trader responsible for unlawful commercial practices a commitment to end its unlawful behaviour, and may also impose the publication of said commitment. The AGCM may also impose the publication of its measure with which it prohibits the further disclosure of the unlawful commercial practice.

With regard to Directive 93/13, article 37 of the Consumer Code allows that consumers associations and traders associations may request the judge to inhibit the use of unlawful terms and conditions by the trader. An inhibitory action may be granted even in urgent cases. The judge may impose the publication of the inhibitory measure on one or more newspapers.

IV. OTHER TYPES OF ENFORCEMENT

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

The Marketing Self-Regulatory Institute (Istituto per l'Autodisciplina Pubblicitaria, "IAP") is an association that was recognised in 1966 and that is aimed at ensuring the honesty, accuracy and veracity of commercial communications in favour of consumers and undertakings.

The IAP issues codes of self-regulations and constitutes the organisms in charge of the code's enforcement operating and judging in complete independence from the IAP itself.

It's a member of EASA (European Advertising Standards Alliance)

The control group of the IAP has the power to:

- a) invite the advertiser to modify the commercial communication;
- b) if the communication is manifestly incorrect, issue a measure to block its diffusion;
- c) appeal to the Gran Giuri (the IAP's decisional organism) that may also designate an expert witness, and at the end of the proceedings, issue a final decision.

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)?

Voluntary ADR organisms that may settle disputes concerning breaches of the Consumer Code may be constituted by the AGCM and the Economic Development Ministry.

In each Chamber of Commerce, a mediation service based on a national procedure which assists citizens and undertakings for ADR is active. Also, in some Chambers of Commerce an arbitral chamber is instituted.

According to article 2 of the Legislative Decree 4 March 2010, no. 28, anyone can use mediation in order to settle a civil or commercial dispute focused on disposable rights.

Even though the proceedings differ in relation to the chosen ADR, the proceedings must satisfy confidentiality and the mediator designation requirements in order to ensure the impartiality and suitability to the accurate and effective exercise of the function.

According to article 806 of the Code of Civil Procedure, the parties may decide to settle a decision concerning disposable rights through arbitration.

After the decision is issued, the party who has interest to execute the decision deposits the original decision before the Court in the district where the arbitration has its seat. The Court declares the decision enforcement with a decree.

The arbitral decision can be appealed for invalidity, revocation or third party opposition before the Court of Appeal located in the district where the arbitration has its seat.

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