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Serbia: Strengthening consumer protection

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Regulatory

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In accordance with the vast experience and detailed directives of European Union regulating this area, the new Law on Consumer Protection was enacted on 21 June 2014 (the "Law"). The idea of the new Law coincides with the idea of the EU project called „The Strengthening of Consumer Protection in Serbia“, with the goal of strengthening the consumers' rights and providing better organization of their communication with the authorities in comparison to the previous law. The need of better cooperation between governmental bodies when protecting those rights is also stressed, and expansion of the scope of competencies of market inspectors and other bodies which are responsible for implementing this Law.

The first significant amendment is in relation to the provisions which refer to the price indication and advertising and receipt issuance. Namely, in contrast to the previous law, which prescribed that the price must be indicated solely in the currency which is the lawful currency in the Republic of Serbia, the Law refers to the provisions of the Law on Trade which prescribes an exception when the price may be indicated in foreign currency but with indication of the calculated exchange rate, and only in the market of services in tourism which are directly connected with foreign countries, vehicles, etc. – in other words in cases prescribed by special regulations. The receipt, in addition to obligatory elements which were mandatory so far, must also contain the specification of the price with regards to specific services being separately charged.

The previous law did not provide for a precise enough obligation for traders to use Serbian language which left room for the traders to act in the manner more convenient to them in the relevant situation. Under the Law there is now a clear obligation to use Serbian language in order to ensure that the consumers are informed in a clear and understandable manner. This is why the Law prescribes the obligation of traders to inform the consumers on basic conditions, characteristics and information on goods and services in Serbian language (as well as in the language and script of national minorities), prior to the conclusion of the agreement. Further, the accompanying documentation, such as user manual and instructions for installing, i.e. other documentation relevant for the consumers to be familiar with the characteristics of technical goods, must be in Serbian language. When advertising through the means of distance communication, the trader is now obliged to, prior to conclusion of the agreement, inform the consumer on the commercial purpose of the activity in a clear and unambiguous manner, in Serbian language. Another novelty is that now, the agreement on tourist travel, as well as time-sharing agreements, agreements on permanent benefits for holidays, the agreements on assistance in resale and agreements on facilitating the exchange, must be in Serbian language, and optionally, they may be drafted in bilingual form.

Under the previous law it was sufficient for the trader to only inform the consumer about any additional expenses that may arise (transport and delivery expenses and post expenses) in order to constitute the obligation for the consumer to pay them in addition to the contractual compensation for the main contractual obligation of the trader. For that obligation to be constituted under the Law, it is necessary for the trader to previously obtain the consent of the consumer for the acceptance of additional expenses, and if the trader only informs the consumer and, without his or her consent, charges the additional expenses, the consumer is not obliged to pay them, and in the case of doing so the consumer may claim a refund for that amount of money.

Further, the Law prescribes that the monetary obligations, save through the bank and post office (as it was prescribed in the previous law), may be paid "through other person, which, in accordance with the law, provides payment services", which opens the possibility of paying through such e-payment services as pay pal, which was recently introduced in Serbia.

Among the most notable novelties is also the obligation of cooperation between the Ministry of Trade, Tourism and Telecommunications and associations and unions on consumer protection with elementary and high schools in order to include the education on fundamental principles of consumer protection in the curriculum of these institutions.

While the consumer was entitled to the unilateral termination of distance agreements and agreements concluded outside the business premises of the seller under the previous law, this right has been transformed into the right of the consumers to withdraw from the agreement under the Law. The consumer may exercise this right within 14 days, without stating any reasons and without paying any additional expenses, by giving the statement on withdrawal which can be given on the special form for withdrawal or in any other unambiguous manner. This statement starts to produce legal effect from the

moment it was sent to the trader, and if the consumer exercises his or her right to withdraw from the agreement, it shall be deemed that the agreement was not concluded in the first place and certain obligations prescribed by the Law occur for both sides. The Law contains an exhaustive list of the exceptions from the consumer's right to withdraw from the agreement, i.e. it provides the situations in which the consumer does not have the right to withdraw from the agreement, such as e.g. in case of agreements concluded in public auction, or delivery of goods produced in line with the special requests of the consumer or clearly personalized goods, and the like.

One important novelty in relation to the territorial jurisdiction of the court in consumer disputes has been introduced under the Law. Namely, according to the Law, the contractual provision by which the territorial jurisdiction outside the territory of consumer's residence is determined, is deemed unfair, regardless of the circumstances of each particular case, and hence null and void. This is important due to the fact that traders previously often contracted the territorial jurisdiction outside the consumer's residence (and often in foreign countries) which significantly discouraged the consumers from seeking legal relief.

When it comes to delivery from the sale and purchase agreements to the address determined by the consumer, the Law prescribes the obligation of the trader to deliver goods in the agreed deadline and in the agreed shape with an obligatory written confirmation on the delivered goods. It is especially emphasized that it shall not be deemed that delivery of goods to the address determined by the consumer is duly performed by simply leaving the goods in front of the house or apartment of the consumer, which was often done in practice.

The consumers' rights in case of lack of conformity of goods have been expanded so that under the Law the consumer is entitled to decrease the price or terminate the agreement with a seller if the seller is unable to or fails to repair or replace the good within a reasonable deadline. The same rights are afforded to the consumer in cases where, due to the nature and purpose of the goods, the repair/replacement may not be conducted by the seller without a significant inconvenience for the consumer. In addition, the consumer is now entitled to ask for the replacement, appropriate decrease of the price, or to terminate the agreement due to the same or other lack of conformity which occurs after the first repair, and the repeated repair is possible only with the explicit consent of the consumer.

The relation between the trader and the manufacturer in case of the lack of conformity is precisely determined by prescribing that the trader is entitled to ask from the manufacturer in the chain of procurement to compensate him for what he has fulfilled on the basis of the obligations of the trader towards the consumer which arose due to the lack of conformity.

Consumer complaints procedure is clearly and accurately defined by the Law so that it leaves no room for confusion. The delivery of the packaging of goods to the trader by the consumer can no longer be a condition for resolving the complaint pertaining to such goods nor a reason for rejection of eliminating the lack of conformity, which effectively removes the possibility of the trader to unjustifiably reject the complaint for that reason. Time of delivery must be clearly indicated on the invoice or other document accompanying the goods, which was not the case under previous legislation. Also, the deadline for responding to the consumer's complaint has been shortened from 15 to 8 days. Specific penalties for traders who do not resolve the complaint in time and in the manner with which the consumer agreed to have also been introduced. There is now an obligation imposed on traders to keep separate records on complaints received, which will include a full chronology and data needed to resolve the demands of consumers.

When it comes to services of general economic interest (supply of electricity, thermal energy, drinking water, etc...) where most of the problems were recorded historically a new approach has been taken - namely, the traders which are providing these services are obliged to form special commissions for resolving the consumers' complaints, in which the representatives of the consumers' organizations, which are on the register kept by the Ministry, are to be present. Under the Law, these traders are obliged to establish advisory bodies in which the representatives of registered associations and unions of consumers will be included.

Further, it is now forbidden for a trader to cease providing services of heating, electricity, or gas supply during the heating season, if a so-called "threatened" consumer lives in the relevant household, i.e. the consumer whom, due to his or her economic or social position, life conditions, special needs, or other severe personal circumstances obtains goods or uses services under particularly difficult conditions or is unable to do so (detailed criteria for the definition of threatened consumers shall be regulated by the Government).

The trader may cease to provide services of general economic interest if the consumer does not settle the obligations within two months after their due date. However, if the consumer challenges the existence or the amount of obligations and continues to pay the invoices for current obligations, he or she cannot be disconnected from the network until the end of proceedings initiated by trader, the subject of which is the disputed obligation.

Also, services which are free of charge should be indicated as such on the invoice, in order to ensure that consumers are aware of their existence.

The number of bodies in charge of consumer protection is increased and now includes the following: the National Assembly, the Government, the Ministry of Commerce, Telecommunications and Tourism, the National Council for Consumer Protection, other ministries and regulatory bodies with statutory responsibilities in the area of consumer protection, provincial or local government, as well as associations and unions. The obligation of their mutual cooperation and increase of the scope of their authorizations and competencies is prescribed, in order to improve the area of consumer protection in general and in order to implement the National Strategy of the Council and the relevant Action Plan. The authorities which were transferred by the previous law from the market inspection to the consumer organizations, but whose capacities proved inadequate for efficient resolution of consumer complaints, are now returned to the market inspection.

The Law establishes a National Register of Consumer Complaints which will be kept by the Ministry of Trade, Telecommunications and Tourism, aimed at establishing a transparent system of violation of consumers' rights by traders to be achieved by publicly disclosing the annual reports on the activities of the Registry.

Numerous novelties have been introduced in the area of resolving consumer disputes. Thus, the court fees for consumer disputes in the value of up to RSD 500,000.00 are abolished, in order to motivate the consumers not to give up on legal proceedings which, in some cases, is the only adequate recourse for protection of their rights.

The Law closely and more comprehensively defines the area of extrajudicial dispute resolution in order to resolve the consumer disputes more quickly, more economically and more efficiently and to, as far as possible, avoid the occurrence of lengthy and expensive court proceedings.

And finally, the mechanisms for the protection of collective interests of consumers were introduced. Thus, the breach of the collective interests of consumers exists when by an identical action, or in the same way by the same person, the right of at least ten consumers in total, which is guaranteed to them by this Law, is violated, or when the unfair business practice (as defined under the Law) is conducted against them, or unfair contract provisions are imposed on them.

By all accounts, it is clear that the project of the European Union has resulted in the enactment of a Law which should significantly strengthen the area of consumer protection in Serbia. The implementation of this Law has been postponed for September of 2014, and until then we are expecting a multitude of secondary legislation that will breathe life into this Law.