

LEGAL FRAMEWORK FOR IMPLEMENTATION OF EU LAW IN THE FIELD OF CONSUMER LAW

Selma Otuzbir, MA, email: otuzbir.selma@gmail.com

Amir Mešinović, MA, email: amir.mesinovic@iu-travnik.com

International University Travnik in Travnik, Bosnia and Herzegovina

Summary: One of the main policy areas of the European Union and a key element of the internal market is a consumer protection policy that protects consumers' security and economic interests, while keeping in mind Bosnia and Herzegovina's aspirations to join the European Union, harmonizing consumer protection standards in Bosnia and With standards in the European Union, with the impact of competition law on consumer protection, it is a serious step towards creating a competitive market economy and achieving EU membership. A high level of consumer protection is one of the goals that Bosnia and Herzegovina strives for in its path towards EU accession. In this direction, activities have been initiated to harmonize regulations, not only in the field of product safety, but also in the area of protection of consumers' legal and economic interests. In order to ensure consumer protection, BiH has adopted several legal acts, the most important in this area being the Law on General Product Safety and the Law on Consumer Protection of BiH.

Keywords: BiH Consumer Law, European Union, consumers, economic development

I INTRODUCTION

The European Union is a community of Member States based on common interests, institutions and legal instruments of the Member States: a single currency, a common defense policy, cooperation in all areas of life and work.⁵⁶ Creating a single economic space is one of the most important economic preconditions for joining the European Union. Particular attention should be focused on three areas: improving the competitive environment within BiH, improving consumer rights and improving product safety and the free movement of goods.

Consumer protection law is beginning to be intensively developed in BiH legislation by signing the Stabilization and Association Agreement between Bosnia and Herzegovina and the European Union and their Member States.

The said agreement stipulates that the parties will cooperate with the aim of aligning consumer protection standards in Bosnia and Herzegovina with the same standards in the European Union. Effective consumer protection is necessary to ensure the proper functioning of a market economy, and this protection will depend on the development and efficiency of the administration to ensure market surveillance and law enforcement in the

⁵⁶ M. Bodiroža, European Union (Rome 1957 to Luxembourg 2008), Voice of Serbian Graphics, Banja Luka 2008, 19.

field. In an effort to bring consumer protection in Bosnia and Herzegovina closer to European Union consumer protection standards, in 2006 the Parliamentary Assembly of Bosnia and Herzegovina adopted a new version of the Consumer Protection Act. This Law is one of the regulations that started the process of implementation of EU directives in the field of consumer protection in the legal system of Bosnia and Herzegovina, which transposes European standards of behavior on the market, both in terms of information and consumer protection itself. Its adoption is a good step to provide comprehensive and systematic consumer protection. It is extremely important for the consumer who is the weaker party to business transactions to be fully aware of all the regulations, as well as to have them in one place. In this way, the Consumer Protection Act became a general consumer protection regulation. However, its adoption does not end the protection process, especially since changes in the field of consumer protection are ongoing. It is therefore a long-term process based on monitoring existing solutions and landscaping non-regulated areas.

1. Consumer protection in Bosnia and Herzegovina

Consumer protection as an EU policy was introduced by the EU Treaty and aims at protecting the health, safety and economic interests of consumers, as well as promoting the consumer's right to information, education and organizing with a view to safeguarding common interests. Consumer protection involves developing legislative practices and other measures, integrating consumer interests into other European policies, complementing Member States' consumer protection policies, and strengthening consumer organizations and their active participation

in the decision-making process⁵⁷. Since then, a large number of acts have been adopted in the European Union for the protection of consumer rights, and bearing in mind that the basics of Bosnia and Herzegovina's internal and external policies are based on the fulfillment of conditions for full EU membership, the Stabilization and Association Agreement states that The Parties will cooperate with a view to aligning consumer protection standards in Bosnia and Herzegovina with the same standards in the Community, and that effective consumer protection is necessary to ensure the proper functioning of a market economy. Thus, in an effort to bring our country's consumer protection closer to the standards of consumer protection in the European Union, Bosnia and Herzegovina has begun to create a legislative framework for consumer protection in BiH, as well as unique institutional structures for its effective implementation, in order not only to prepare for to ensure a level playing field in the single market, but also to ensure consumer confidence in a competitive internal market with adequate protection and effective enforcement of the law, regardless of the location of the consumer or other business entity. The Law on Consumer Protection in Bosnia and Herzegovina is one of the regulations that started the process of implementation of EU directives in the field of consumer protection in the legal system of Bosnia and Herzegovina, and most of the EU consumer regulations implemented in BiH law came into existence at the time when changes in EU consumer policy. The Consumer Protection Act passed is a general regulation for the area of consumer protection, which, by defining the framework of the consumer protection system, regulates relations between consumers, manufacturers and retailers in the territory of Bosnia and Herzegovina. In addition to this Law, there are a number of

⁵⁷ S. Kurtić / S. Otuzbir / R. Kadrić, Principles and Organization of the European Union, Travnik

International University Faculty of Law Travnik, Travnik 2015, 140.

other laws related to consumer protection that apply to relationships and cases in the field of consumer protection that are not regulated by this Law, such as the Food Law, the General Product Safety Act, and the relevant provisions of the law that obligations in Bosnia and Herzegovina are regulated. The fundamental goal of consumer policy in Bosnia and Herzegovina is to continuously improve the quality of life of all citizens of Bosnia and Herzegovina, and to promote consumer health and safety, and to achieve this, it is necessary to ensure the rule of law, democracy and civil society through the implementation of the developing goals. ensure further harmonization of legislation with European Union legislation, create the conditions for efficient resolution of perceived problems in the field of consumer protection, work to raise consumer awareness of their real position on the market, provide support to consumers in the exercise of their rights, establish interconnection of all consumer protection carriers, strengthen cooperation and exchange of information, strengthen the position of consumers in the market and raise awareness of consumers in relation to their rights and role in the market economy, improve consumer information, establish different forms of consumer consultation and education, to protect the health and safety of consumers, and to improve the provision of information and public awareness of consumer rights in BiH, through the planning of promotional activities at all levels and the promotion of media activity.⁵⁸ In order to realize the stated goals of the consumer protection policy in Bosnia and Herzegovina, the Law on Consumer Protection lists the entities responsible for the implementation of the policy, ie consumer protection in Bosnia and Herzegovina, of which we highlight the following:

- Ministry of Foreign Trade and Economic Relations of BiH - Department for Market Surveillance, Consumer Protection and Competition
- Inspection Bodies in FBiH, RS and BD BiH
- Institution of the Ombudsman for Consumer Protection in BiH

1.1. Ministry of Foreign Trade and Economic Relations of BiH - Department for Market Surveillance, Consumer Protection and Competition

The Department for Market Surveillance, Consumer Protection and Competition, within the Sector for Economic Development and Entrepreneurship of the Ministry of Foreign Trade and Economic Relations of BiH, performs tasks related to the drafting and implementation of laws and other regulations related to consumer protection; gives expert opinions on consumer protection; implements activities related to harmonization of BiH legislation with EU legislation in the field of consumer protection; cooperates with the relevant EU consumer protection authorities; proposes and monitors the content of the projects of the EU program from its competence; performs professional tasks related to the work of the Consumer Protection Council of BiH; analyzes and monitors the situation in the field of consumer protection; provides expert assistance to consumer protection organizations in the implementation of projects; cooperates with governmental and non-governmental consumer protection providers and other stakeholders; performs other tasks within its competence. A consumer advisory service has been set up within this department, to which individuals and legal entities can contact, and to seek advice on consumer protection.

⁵⁸ State Annual Program for Consumer Protection of Bosnia and Herzegovina for 2015, Official Gazette of BiH, No. 50/15, p. 6

1.2. Inspection Bodies in FBiH, RS and BD BiH

The special laws on inspections in the FBiH, RS and Brcko District of BiH regulate the performance of inspections, the organization of inspectorates, the management of these bodies, the rights, obligations and responsibilities of inspectors and other issues relevant to the functioning of inspections. When conducting inspections, inspectors apply the provisions of a wide range of legal regulations that regulate in a certain way the area of consumer protection. A significant step towards protecting consumer rights was made by introducing a system of complaints and complaints from citizens by telephone, as a direct link between consumers and inspectorates. Inspection on citizens' applications related to the violation of their rights takes priority. If the purchased product is of poor quality, no invoice or guarantee has been issued, the price of the product has not been properly highlighted or other rights guaranteed by the Law on Consumer Protection in BiH have been violated, consumers can turn to market inspections:

- Federal Inspection Directorate of FBiH
- Republic Inspection Administration of RS
- Inspectorate of Brcko District of BiH⁵⁹

1.3. Institution of the Ombudsman for Consumer Protection in BiH

The Institution of the Consumer Protection Ombudsman in BiH in the system of consumer rights protection is an independent institution established with the aim of promoting good and efficient implementation of consumer protection policy. The Ombudsman represents the interests of consumers in all business

sectors, makes recommendations, guidelines and other individual and general legal acts. It is authorized to issue instructions for termination of activities contrary to consumer legislation, to initiate proceedings before the competent court in cases of damage in the name of protecting the collective interests of consumers. It should be emphasized that the institution operates in general, ie. in terms of general consumer interest. This means that the Ombudsman will not take measures to resolve individual disputes. The role of the Ombudsman institution is to protect and strengthen the position of consumers in society. The scope of activities mainly covers the following: resolving consumer complaints, providing information to consumers organized in associations and the Association of Consumers of BiH, and educating them, cooperating with the media on all consumer issues, product safety, product quality, and environmental impact. The Ombudsman also participates, as an intervener, in discussions with sectoral regulatory bodies to protect the economic interests of consumers. If it is necessary to protect collective rights of consumers in contractual relations with providers of goods and services, that is, to respond to systematic violations of consumer rights, consumers can turn to: the Institution of the Ombudsman for Consumer Protection in BiH. The Law on Consumer Protection in Bosnia and Herzegovina, as a basic law of the Ombudsman Institution, prescribes the obligations and powers of the Ombudsman and at the same time regulates relations between consumers, manufacturers and traders in the territory of Bosnia and Herzegovina. Consumer protection law is largely aligned with the *acquis*.

⁵⁹ Consumer Protection in BiH, http://annt.gov.ba/za_potrosace/FAQ/default.aspx?id=2980&langTag=bs-BA, (20 November 2017)

1.3.1. Obligations of the Institution of the Ombudsman for Consumer Protection in BiH

- provides information on consumer rights and obligations and supports consumer associations in their activities;
- monitor or propose activities related to the consumer-to-consumer relationship, as regulated by the law and regulations governing obligations or any other law;
- investigates ex-officio market activities or ex officio complaints and coordinates its activities with entity market inspections;
- make decisions and take other actions in cases of consumer complaints or breaches of good business practices;
- issue guidelines or recommendations on specific standard conditions or activities applicable in specific business sectors or applied by specific economic operators;
- recommends the use of certain contract terms in contracts used in specific business sectors;
- negotiate with representatives of certain trade associations the contract models applicable in specific business sectors;
- proposes and initiates consumer dispute resolution by applying alternative dispute resolution mechanisms;
- contacts with the BiH Ombudsman Institution on common problems, in particular on services of general interest or public services;
- proposes to the Consumer Protection Council and the BiH Council of Ministers the necessary improvements to the Consumer Protection Act, and contributes to

the direction and effectiveness of consumer protection policies;

- explores the impact of other government initiatives on consumer protection.⁶⁰

1.3.2. Powers of the Institution of the Ombudsman for Consumer Protection in BiH

- issues instructions for the cessation of activities contrary to consumer law and summarizes those instructions to the court;
- initiate proceedings before a competent court;
- initiate proceedings before the competent court in cases for compensation of damage to the collective interest of consumers, in accordance with the provisions of this Law.⁶¹

1.3.3. Mission of the Consumer Ombudsman Institution in BiH

It will act to protect the interests of consumers and not resolve their individual disputes, which is the task and competence of other statutory and established agencies, administrations, institutions and inspectorates. Providing legal advice and suggestions to consumers is the responsibility and task of local Consumer Advice Centers (consumer associations), which are established and operating throughout Bosnia and Herzegovina. The Ombudsman Institution is managed by the Consumer Ombudsman and is empowered to issue instructions for the cessation of activities contrary to consumer legislation, to initiate proceedings before the competent court in cases of compensation for damage to the collective interest of consumers, in accordance with the provisions of the Law on Consumer Protection in BiH. The ombudsman institution has the task of protecting and strengthening the position of

⁶⁰Law on Consumer Protection in Bosnia and Herzegovina, Official Gazette of BiH, No. 271/06, Article 101.

⁶¹ Ibid., Article 103

consumers in society. The term consumer position refers to the consumer in various roles as a broad concept, and the attitude or interest of the consumer. Reinforcement means submitting changes that affect the position of consumers, identifying risks, drawing attention to consumer attitudes in social decision making in Bosnia and Herzegovina and internationally, and promoting one's own options for consumer action. The Ombudsman Institution seeks to ensure that there is a competition in which the most successful and efficient ones win, which is reflected in the higher supply, better quality and lower price of their products and services. In this way, consumers benefit from the choice of a wider range of products and services offered by a larger number of providers, at prices and quality that meet their needs. The Consumer Economic Interest Protection Policy requires the Ombudsman to be continuously focused on creating conditions to reduce barriers to economic development and further liberalize markets that have traditionally been closed to competition (telecommunications, energy, utilities, transport, etc.). The institution is committed to the effective enforcement of consumer rights protection under their current regulations and to the creation of a consumer-friendly society.

2. Future harmonization of BiH legislation with the EU in the field of consumer protection

EU enlargement is a term that describes the process of full membership of the new Member States and is one of the most important EU policies. The objectives of EU enlargement policy are to increase security, stability and prosperity on the European continent.⁶² The essence of accession negotiations is to align Community national legislation with the *acquis communautaire*, which must be

achieved by the time of accession to the candidate country. Aligning the legislation, regulations and procedures of a country with the *acquis communautaire* is the most complex and time consuming part of the entire integration process. The entire *acquis communautaire* for the accession negotiations with the EU candidate country since 2005 is divided into 35 negotiation chapters. The process is carried out separately for each chapter of the negotiations, and the candidate country is expected to demonstrate whether it will be able to fully adopt the *acquis communautaire* by chapter and reconcile the differences observed, or request a transitional period for full adoption and implementation after full membership. .

2.1. Chapter 28. Consumer and health protection

Chapter 28 is divided into two sections and addresses consumer policy and public health policy. The EU consumer protection *acquis* regulates the safety of consumer goods and the protection of consumers' economic interests in a number of individual sectors. They include a general financing framework and rules governing consumer protection at EU and Member State level, including prohibition measures and access to justice, with measures to improve cooperation between Member State authorities. The harmonization of consumer protection rules aims to remove obstacles in the market and allow for an integrated economic space so that services and goods can circulate to the same standards of safety and quality and that consumers enjoy a high level of protection for their rights. The implementation of European consumer protection standards will enable BiH consumers to enjoy the same rights as European consumers. This means a greater degree of product safety in the market, and thus better protection of

⁶² S. Kurtić / S. Otuzbir / R. Kadrić, Principles and Organization of the European Union, Travnik

International University Faculty of Law Travnik, Travnik 2015, 140.

consumer health, protection of consumer rights when purchasing products and services on the market, as well as an overall increase in the quality of life. In this way, the consumer becomes the regulator of economic development and thus directly influences the business policy of businessmen, encourages competitiveness and creates a stimulating environment in the market. BiH is aware that the implementation of European standards in the context of consumer and health protection will provide greater consumer confidence, strengthen their role in the market arena and provide greater care for their interests in future policy making. The EU public health acquis covers measures related to the general funding framework and measures to regulate this area. It also regulates issues related to tobacco control, communicable diseases, blood, tissues and cells, mental health, prevention of drug abuse, health inequality, nutrition, reduction of the harmful effects of alcohol, cancer screening, healthy environment, as well as prevention of injuries, promotion of safety and the European Rare Disease Action. Through a common consumer protection policy, and through regulation and supervision in the area of consumer protection, a greater degree of product safety will be enabled in Bosnia and Herzegovina, and thus better consumer protection, as well as a general improvement in the quality of life. This reduces healthcare expenditures, that is, the cost of treating injuries and illnesses caused by the use of untested products. The development of an out-of-court dispute resolution system in this area is burdensome for the courts, and the work of the Consumer Protection Association contributes to strengthening consumer influence. If EU rules are not properly implemented, consumers can seek legal protection. This requires better cooperation between EU Member States. Litigation can

be expensive and time consuming, especially if it is conducted outside your home country. To encourage out-of-court settlement, the Commission has developed ways to resolve conflicts that are cheap or free. Among them is the online dispute resolution system, which will start operations in 2016. Another way to seek legal protection for consumer problems involving multiple EU Member States and to inform about rights is through the Network of European Consumer Centers, under providing free consumer advice and support to EU residents who purchase goods and services from traders from other EU Member States.⁶³

II CONCLUSION

In most countries, legal instruments for consumer protection are constitutional provisions, consumer laws, special laws, so-called consumer protection laws and individual laws governing market behavior. Preparing to join the European Union and align domestic legislation with European Union law should lead to a greater degree of consumer protection. Bosnia and Herzegovina will open Chapter 28 on its European path and bring consumer law into line with EU law. The aforementioned chapter is divided into two parts and refers to consumer policy and public health policy. The aim of harmonizing consumer protection rules is to remove market barriers and create an integrated economic space so that services and goods can circulate with the same standards of safety and quality, so that consumers enjoy a high level of protection for their rights. The common policy of consumer protection, through regulation and supervision in the field of consumer protection, will enable a greater degree of product safety, and thus better consumer protection, as well as a general improvement in the quality of life.

⁶³ Consumers, http://www.europa.eu/european-union/topics/consumers_en, (20 November 2017)

III LITERATURE

- [1] Bodiroža M. M., (2008.), Evropska unija od Rima 1957. do Luksemburga 2008., Glas Srpske grafika, Banja Luka
- [2] Kurtić S., Otuzbir S., Kadrić R., (2015.), Principi i organizacija Evropske unije, Internacionalni univerzitet Travnik u Travniku Pravni fakultet Travnik, Travnik
- [3] Državni godišnji program za zaštitu potrošača Bosne i Hercegovine za 2015. godinu, (Službeni glasnik BiH, br. 50/15)
- [4] Zakon o zaštiti potrošača u Bosni i Hercegovini, (Službeni glasnik BiH, br. 271/06)
- [5] http://www.europa.eu/european-union/topics/consumers_hr (pristupljeno 20. novembra 2017.)
- [6] http://www.annt.gov.ba/za_potrosace/FAQ/default.aspx?id=2980&langTag=bs-BA, (pristupljeno 20. novembra 2017.)