



SK Legal Alert

September 2022

Weinhold Legal

NEW CONSUMER PROTECTION ACT

As part of the legislative changes, the Ministry of Economy of the Slovak Republic prepared a draft of a new Consumer Protection Act ("**new act**") as a result of the need to transpose Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods.

The planned entry into force on 28 May 2022 has not been fulfilled and the new act is still in the phase of evaluation of interministerial commentary procedure.

The new act is to replace the original Consumer Protection Act, the Act on Alternative Dispute Resolution, the Act on Consumer Disputes, the Act on Consumer Protection in case of Sale of Goods or Provision of Services under a Distance Contract or a Contract Concluded Outside the Seller's Premises, and the Act on Supervision and Assistance in Resolving Unjustified Geographical Discrimination against Customers in the Internal Market. In addition, the Act is to repeal Decree of the Ministry of Justice of the Slovak Republic No. 406/2008 Coll. on the composition, decision-making, organisation of work and procedure of the Commission for the assessment of terms and conditions in consumer contracts and to amend or supplement the Civil Code.

The new act brings changes in the following areas:

New Definitions and Terms

The new act proposes a change in the definition of a trader, which under the current legislation is a seller. The term trader is intended to more clearly express and evoke that it includes

the seller not only as a party to the contract of sale, but also in other situations in which he acts in relation to consumers (e.g. in the case of marketing and advertising of the trader, promotion, etc.). A new way of defining a trader depending on the conduct of a business or commercial practice should also be introduced in order to fully comply with EU law. Direct standing and the resulting obligations and liability should thus now also be attributed to a person acting in the name of or on behalf of the primary trader.

It is also proposed to replace the definition of product under the current legislation and to introduce a new term goods. Goods shall mean any tangible object generally including, inter alia, electricity, water or gas, if sold in a limited volume or in a specified quantity.

The new act also changes the definition of service. While under the current legislation a service is any activity or performance offered to a consumer for a fee or free of charge, the free of charge services (e.g. various loyalty and reward programmes) shall be excluded from the scope of the new act.

In addition to changes in legal definitions, the new act should also define the term online market. For the purposes of the act, this should be understood as a service which, by means of an online space, allows consumers to conclude distance contracts with traders or consumers other than the marketplace operator. The term online market therefore includes various online bazaars or platforms. Please note, however, that the online market is always intended to be mediated by and therefore does not include the trader's own e-shop.

The new act should also introduce the term of online space, which is a broader term than online market. The term should include online markets as well as websites, apps and other online interfaces.



SK Legal Alert

September 2022

Weinhold Legal

The new act also defines durable medium as means of enabling the consumer or trader to keep the information addressed to him for a period of time that corresponds to the purpose of the information, in a way that allows its unchanged reproduction and use in the future. This includes for example, paper, e-mail, USB stick, CD, DVD, memory card or computer hard disk. However, according to the explanatory report to the new act, the term excludes so-called hyperlinks, i.e. the provision of information by means of a link to the address of the location of a page or document on the Internet. These links or their content may change and do not provide the consumer with the possibility of retention.

Unfair Trade Practices

Information obligations of the online market operator

In the area of unfair trade practices, it is proposed to introduce information obligations for online market operators. Such an operator should now be obliged to inform the consumer:

- ▶ of the main parameters that determine the ranking of products in online search results;
- ▶ whether the person offering the product on the online marketplace is an entrepreneur;
- ▶ whether and how the trader ensures the authenticity of the consumer ratings of products on online marketplaces.

Extension of deceptive commercial practices

In the area of unfair trade practices, the scope of deceptive trade practices will be extended to include dual quality marketing. Thus, deceptive commercial practices will also include the marketing of goods in a way that presents the goods as identical to goods marketed in other EU Member States or

EEA Agreement Member States if such goods have substantially different composition or characteristics. In the event of a breach of the prohibition on dual quality marketing, the infringer may be imposed a fine of between EUR 1,000 and 1 % of the turnover for the preceding accounting period, up to a maximum of EUR 100,000.

Price discounts

Another important proposed change is the change in the price discount legislation, which objective is to prevent price manipulation in the form of misrepresentation of the amount of the actual discount. Under the new act, the trader is required to state the previous price in any price reduction notice. The previous price means the lowest price at which the trader sold or provided the goods, either in a period of not less than 30 days before the price reduction or in the period since the trader started selling or providing the goods, if the trader sold or provided the goods in a period of less than 30 days before the price reduction.

However, in the case of a gradual price reduction, the trader may always indicate the original price before the first price reduction as the previous price, irrespective of the time of sale or provision of the goods.

Alternative dispute resolution

A new way to terminate alternative dispute resolution

The new act should introduce a new way of terminating alternative dispute resolution ("ADR"). Compared to the current legislation, the new one allows termination of alternative dispute resolution also on the basis of a notification by one of the parties that the dispute has been resolved, but only after the expiry of the time limit for other party's objections.



SK Legal Alert

September 2022

Weinhold Legal

This form of termination will be relevant if the dispute is resolved by agreement between the trader and the consumer outside the alternative dispute resolution regime.

Opinion of a qualified person

Within the framework of ADR, it is also proposed that a disputant may secure, in the case of a dispute arising from liability for defects, the opinion of a qualified person on substantive issues that may be of fundamental importance for the resolution of the dispute, but which are beyond the competence of the alternative dispute resolution entity.

Rejection of vexatious proposals

Owing to the new act, the ADR entity (e.g. the Regulatory Authority for Electronic Communications and Postal Services, the Slovak Trade Inspection or a legal entity registered in the list of alternative dispute resolution entities) is to have the possibility to reject a consumer's vexatious proposal for alternative dispute resolution. A vexatious proposal is defined by the new act as a repeated proposal that has already been rejected at least twice by the alternative dispute resolution entity and that does not contain any new facts that would justify a course of action other than rejection of the proposal.

Sanctions

Sanctions Reduction

The possibility of reducing the sanction by half should be introduced where the supervised person demonstrates that it has brought the infringement to an end between the initiation of the infringement proceedings and the adoption of the decision imposing the fine and where, at the same time, it has made reparation for the benefit of consumers who have been harmed by the infringement or whose rights or legitimate

interests have otherwise been affected. However, the condition that the remedy has been carried out shall apply only if the nature of the infringement makes it possible for it to be carried out.

The supervisory authority shall not be obliged to investigate the above mentioned facts. It is primarily in the interest of the supervised person to prove them.

Imposition of sanctions in dependence on the trader's turnover

In addition to the possibility of reducing the sanction by half, the new act also proposes the imposition of sanctions depending on the turnover of the trader. The upper limit of the fine rate should be changed to a percentage limit determined according to the turnover of the supervised person, but the maximum ceiling of the fine should remain a fixed amount (e.g. a fine of between EUR 1,000 and 1% of the turnover for the previous period, but up to a maximum of EUR 100,000).

Changes to the Civil Code

With the new act's approval and entry into force, the Civil Code should be updated for the digital era. It should contain a definition of an object with digital elements, i.e. any item that contains digital content or a digital service or is connected to digital content or a digital service in such a way that their absence would prevent the object from performing its functions. Examples of digital objects defined in this way are smart televisions and smart phones.

Digital content should be defined in the Civil Code as data created and delivered in digital form.

In turn, a digital service should be defined as a service that allows the creation, processing or storage of, or access to, data in digital form, or that allows the exchange or any



SK Legal Alert

September 2022

Weinhold Legal

interaction of data in digital form that is uploaded or created by users of the service.

The new act should also exclude the regulation of liability for defects in goods from the Consumer Protection Act and leave this regulation only in the Civil Code.

○ ○ ○

In addition to the changes in the above-mentioned areas, the new act should also abolish certain obligations and provisions, such as:

- ▶ the obligation to draw up an expert's report in the case of claiming product defects;
- ▶ the obligation to provide an acknowledgement of receipt and confirmation on handling of the complaint;
- ▶ provisions prohibiting the imposition of obligations on consumers without legal justification;
- ▶ provisions prohibiting the refusal to sell a product on display or to provide a service which is within the trader's operational possibilities.

The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics covered in this bulletin should be consulted before any decision is made. The information contained in this bulletin should not be construed as an exhaustive description of the relevant issues and any possible consequences, and should not be fully relied on in any decision-making processes or treated as a substitute for specific legal advice, which would be relevant to particular circumstances. Neither Weinhold Legal, v.o.s. advokátní kancelář nor any individual lawyer listed as an author of the information accepts any responsibility for any detriment which may arise from reliance on information published here. Furthermore, it should be noted that there may be various legal opinions on some of the issues raised in this bulletin due to the ambiguity of the relevant provisions and an interpretation other than the one we give us may prevail in the future.

For further information, please contact the partner / manager you are usually connected to.



Tomáš Čermák
Managing Associate
tomas.cermak@weinholdlegal.com



Karin Konečná
Attorney at Law
karin.konecna@weinholdlegal.com