

TRADE LAW

1.67

CURRENT SITUATION

The Law on Trade (Zakon o trgovini, Official Gazette of the RoS, no. 52/2019) (the "Law on Trade") currently in force, which occupies a central place among the regulations governing the trade of goods and services, has been applicable since 30 July 2019. On the same date the Amendments to the Law on Electronic Trade (Official Gazette of the RoS, no. 52/2019) entered into force.

The amendments introduced by the cited laws were primarily aimed at additional regulation of contracts in electronic form, electronic trade and internet sales, which are widely represented nowadays, and until then insufficiently regulated - which resulted in numerous abuses. For this purpose, new terms - such as electronic platform and electronic store - were defined. The increasingly present forms of electronic commerce, such as "web-shop" and "drop-shipping", were also recognized and defined.

The key novelties of the Law on Trade, which are aimed at improving legal certainty and the entire economic ecosystem, are reflected in the following:

1. Better definition of the sale incentives

Main forms of reduced-price trade are finally defined, followed with the special rules for each of them. These forms are: seasonal discount, action sale and clearance sale.

2. Introduction of the definitions of types of distance trade

For the first time, electronic platform and electronic store are defined, whereas the distance trade is now split to e-commerce and other distance trade. Moreover, specific forms of e-commerce are defined: web shop, electronic platform, and drop-shipping.

3. Labeling requirements

The Law on Trade imposes obligation of distance trader to make mandatory labeling data directly and permanently available.

4. Lifting the obligation of publishing the retail format

The Law on Trade lifts the obligation of publishing retail format valid until then, so that the traders can now freely decide whether to publish retail format or not.

5. Concealed shopping as new authorization in supervisory procedure

A trade inspector now has the authority to conduct con-

cealed purchase of goods/service, in accordance with regulations related to the supervisory procedure, in order to achieve more efficient detection of illegal trade.

Amendments to the Law on Electronic Trade improved already adopted solutions in the basic law, specified and redefined terms and created a better legal framework for electronic trade, continuing the process of harmonization in accordance with European legislation, i.e. the Directive on Electronic Commerce (Directive 2000/31/EZ).

POSITIVE DEVELOPMENTS

Positive steps were taken by adopting the cited laws.

Before the entry into force of the Law on Trade, sales incentives were generally defined, which caused certain ambiguities in their application. Different terms are used that do not inform consumers in the right way. This often caused consumers to make decisions they would not otherwise have made. There was a need to specify the basic forms of discount and define clear rules for each of them.

The Law on Trade introduced the concept of electronic store and electronic platform, which until then had not been recognized in the domestic legislation. This is significant from the consumer rights protection point of view - because it should be clear to the buyer from whom he buys goods, with whom he enters into a contractual relationship, and whom he should refer to in the event of a complaint.

A clear distinction is made between the seller of goods - the web shop, and the link between the consumer and the trader - i.e., the platform as an "intermediary". This does not exclude the possibility that a merchant who owns a platform is also a seller of goods.

An important innovation is the possibility to display product prices in foreign currencies as well. This makes it even easier for domestic traders to open their offer to foreign markets, primarily to the markets of countries in the region, but also to other developed markets.

In 2021, merchants who organize and advertise sales incentives in electronic commerce are controlled for the first time. In 120 inspections, violations were found, and 40 requests were submitted for the initiation of misdemeanor proceedings.

Among those who engage in fraud, the majority are those who sell goods through social networks, particularly Facebook and Instagram, and the National Consumer Organization of Serbia (NOPS) published a blacklist of traders on these networks based on consumer reports.

In addition to legal instruments, education and raising public awareness about smart and safe online shopping are key to strengthening consumer awareness. In this regard, the relevant Ministry makes media campaigns aimed at consumer education, together with the introduction and implementation of new legal solutions.

REMAINING ISSUES

The last few years have seen a significant increase in e-commerce traffic. The growth was certainly influenced by the increase in the number of merchants engaged in online commerce. On the other hand, there are also frequent abuses associated with this type of trade (including, among other things, sales carried out by entities that do not have the status of a trader (legal subjectivity, prominent company, etc.), and which, accordingly, do not provide customers with guarantees in the domain of regulations on product safety, consumer protection, advertising, etc.)

The Law on Trade has laid the foundations and greatly improved legal solutions regarding the circulation of goods and services, but there is still room for additional improvement and filling in the gaps.

The work on the draft of the new Law on Trade is underway,

and we believe that this is the right moment to improve certain solutions for the benefit of the entire Serbian economy.

Firstly, there is the existence of a legal gap due to the absence of a definition of a trader – i.e. subject that performs trade activities and to which this law primarily applies.

Also, there is a need to introduce a definition of related traders - primarily in the context of disabling the avoidance of liability for unfair market competition when these actions are carried out by affiliated company of a trader that is active on a market where its competitor (against whom the actions of unfair market competition are aimed) is not active.

To suppress the gray economy, it is necessary that the goods that are placed on the market, transported or used for the provision of services, at the time of inspection, are accompanied by prescribed documents that are directly related to their production, procurement, sale and transportation.

The need to extend the allowed duration of promotional sales to two months is identified - we believe that such a step forward would benefit both consumers and merchants.

It is also particularly important to harmonize the relevant provisions of the Law on Trade (primarily Article 34) with the Law on Food Safety and by-laws.

Finally, further improvement and simplification of import procedures is needed.

FIC RECOMMENDATIONS

- Elimination of legal gaps in the regulatory framework, including, without limitation, by introducing above proposed amendments (defining the merchant, related merchants, extending the duration of the promotional sale).
- Harmonize Article 34 of the Law on Trade with the Food Safety Law and by-laws.
- Devote attention to by-laws.
- Harmonization with EU regulations and standards is further needed.
- Simplification of the importation procedures.