

1. Na zakonodavnom planu:

a) Da se prvo donese uskladen sa ovom Direktivom poseban zakon o nekorektnoj trgovačkoj praksi koji će na opšti način regulisati za sve privredne delatnosti nekorektnu postupku trgovaca prema potrošačima koji mogu uticati na njihove kupovne odluke o proizvodima, uključiv i nekorektno reklamiranje i marketing, s obzirom da fragmentarno normiranje ovih pitanja u Zakonu o zaštiti potrošača i Zakonu o oglašavanju iz 2005. god. ne zadovoljava cilj koji pokriva regulativa koju donosi ova Direktiva: da zakon obezbedi visok stepen zaštite potrošača od nekorektnih trgovačkih postupaka tako što će zabraniti postupke trgovaca koji direktno povreduju ekonomske interese potrošača u pogledu donošenja informisanih i efikasnih odluka o kupovini proizvoda i na taj način posredno zaštititi ekonomske interese legitimnih konkurenata na tržištu;

b) Da se u Zakonu o osiguranju utvrdi lista nekorektnih trgovačkih postupaka specifičnih za delatnost osiguranja, koja će obuhvatiti osiguravače, posrednike osiguranja i konsultante osiguranja i lista zahteva u vezi sa informacijama povodom komunikacija ovih subjekata tržišta osiguranja s njihovim klijentima koji imaju položaj potrošača koje predviđaju Direktiva o osiguranju života od 2002, Treća direktiva neživotnih osiguranja od 1992 i Direktiva o posredovanju o osiguranju od 2002, ali i druge u tekstu razmotrene direktive koje ureduju zahteve povodom informacija koje se daju potrošačima prilikom zaključivanja distancionih ugovora, s obzirom da se propusti u njihovom saopštavanju u svim okolnostima smatraju prema Direktivi o nekorektnoj trgovačkoj praksi, prevarnim nekorektnim trgovačkim postupcima.

2. Na planu poslovnih kodeksa:

Da se Zakonom o osiguranju utvrdi obaveza za udruženja društava za osiguranje, posrednika i konsultanata u osiguranju da donesu svoje kodekse poslovne prakse u kojima će oni u cilju održavanja visokih standarda morala na strani ovih profesionalaca prihvatiti pravila Direktive, precizirati ih i dopuniti, a posebno da u njih uključe pravila kojima će urediti pitanje profesionalne pažnje članica u postupcima povodom trgovačkih komunikacija sa potrošačima upečenih na donošenje odluka potrošača o kupovini proizvoda osiguranja, uključiv i profesionalnu pažnju članica povodom reklamiranja i marketinga proizvoda osiguranja usmerenih na odluke potrošača o kupovini proizvoda.

APPLICATION OF THE DIRECTIVE ON UNFAIR COMMERCIAL PRACTICE 2005 ON INSURANCE

Summary

Author studied the topic in two parts. In first part, he scrutinised in detail six fields regulated by Directive, which are, as per his interpretation, of special importance for Directive's implementation on insurance. In second part, he explains basic attitudes on the method of harmonising the insurance law system of Republic Serbia by this Directive. In such regard, he gives the following proposals:

1. Legislation

a) In first instance, dedicated Unfair Commercial Practice Act harmonised with this Directive regulating all fields of the unfair commercial practices of merchants towards consumers that may influence consumer buying decision on products, including unfair advertising and marketing with such effect should be adopted. This is because fragmentary address of these issues in the Consumer Protection Act and Advertising Act 2005 could not gratify objectives the Directive covers, i.e. that law ensures high level of consumer protection against unfair commercial practice by prohibiting merchant acts directly impairing consumer economical interest in making informed and efficient decision on buying products and providing indirect protection of the economical interest of the legitimate competitors on the market;

b) Unfair commercial acts of specific insurance activities must be defined in the particular list of the Insurance Act, embracing insurer, insurance intermediaries and consultants. The other list of requirements refers to information that should be provided to insurance clients as consumers in the light of Life Insurance Directive 2002, Third Non-Life Directive 1992, Directive on Insurance Intermediaries 2002, but also adjusted to insurance, other, in this work, considered Directives regulating information requirements provided to consumers before concluding distance contracts, because failure to provide such information in all circumstances are considered fraudulent commercial acts by the Directive on Unfair Commercial Practice;

2. Codes of Conduct

For maintaining high integrity standards, changes of the Insurance Act must allow for obligation of the insurance companies' and intermediaries' association to adopt their codes of conduct implementing rules of this Directive. Special attention should be imposed on the insurance companies and intermediaries on making provision of professional negligence for conduct in the field of commercial communication with consumers aimed at consumer making decision on buying insurance product, including professional liability for advertising and marketing of the insurance products aimed at consumer decision on products.