CONSUMER PROTECTION

Introduction

Consumer protection is a relatively new sphere of law in Lithuania. It was established to guarantee the rights and protect the economic and social interests of consumers of goods and services. Before adoption of the 10 November 1994 Law on Consumer Protection, these issues were regulated by the Civil Code of the Republic of Lithuania and various legal acts. The European Agreement Establishing an Association Between the European Communities and their Member States and the Republic of Lithuania (effective from 1 February 1998) requires harmonisation of the legislation of the Republic of Lithuania with the *acquis communautaire*. In this connection, new rules of product labelling and the 1 June 1999 Law on Product Safety were adopted to conform with the EU law. The 19 March 1998 Law on Tourism partially reflects the EU package travel directive.

A new version of the Law on Consumer Protection enacted on 19 September 2000 implements various EU directives, including directives on unfair contract terms, package tours, distance selling and consumer credit. Other specific legislation concerning the disclosure of prices and terms of package travel are under preparation.

Applicable Legislation

3) The 23 March 1999 Law No. VIII-1099 of the Republic of Lithuania "On Competition";
6) The 1 June 1999 Law No. VIII-1206 of the Republic of Lithuania "On Product Safety";
7) Rules on Retail Trade, approved by the 11 June 2001 Resolution No. 697 of the Government of the Republic of Lithuania;
8) Rules on Labelling of Items (Goods) Sold in the Republic of Lithuania and Indication of Prices, approved by the 15 April 2002 Order No. 137 of the Ministry of Economy of the Republic of Lithuania.

Regulatory Framework

The National Consumer Protection Council has the main jurisdiction over issues of consumer protection. It is a permanent executive institution that supervises compliance with the Law on Consumer Protection and applies sanctions, within its competence, against violators of consumers' rights. Also, it co-ordinates the consumer protection activities of other State institutions.
Many other institutions play a role in the protection of consumer rights, namely: the State Hygiene Inspection Department under the Ministry of Health; the State Medicine Control Agency under the Ministry of Health; the State Food and Veterinary Service, the State Non-Food Inspection, the Lithuanian Metrology Inspection, the State Tobacco and Alcohol Control Office under the Government of the Republic of Lithuania, the Department of Standards etc.

**Point of Interest**

Due to a considerable number of State institutions involved in consumer protection, they face challenges when enforcing existing legislation and co-ordinating their activities. The National Consumer Protection Council has been established just recently and it does not yet work as an effective co-ordinator of consumer protection activities.

**Consumers' Rights**

The Law on Consumer Protection defines “a consumer” as a natural person who intends to buy, buys and uses goods or services for personal or household purposes.

In the Republic of Lithuania, consumers have the following enumerated rights:

1) the right to freely purchase and use goods and services;
2) the right to purchase goods and services that meet recognised quality and safety standards;
3) the right to request relief for the infringement of consumer rights, including compensation for losses;
4) the right to obtain information on goods and services and on procedures for protection or restoration of consumer rights;
5) the right to form consumer organisations;
6) the right to obtain assistance of State and municipal institutions in cases of breach of consumer rights;
7) the right to education in the sphere of consumer protection.

**Quality of Goods and Services**

**General Requirements**

The quality of goods and services must not be worse than the quality standards enumerated under law or pursuant to a contract. If the contract does not define product quality, its quality must correspond to the usual standards for such goods.

The seller or, in case of services, the supplier, is responsible for the quality of goods sold or services rendered. Goods or services that may have a negative effect on human life and health may be sold or rendered only if their safe use is certified by appropriate State agencies.
If non-food items sold to consumers do not correspond to standards contained in their documentation, or are not in compliance with the conditions set forth under a contract (unless it is proved that the defects appeared through the fault of the consumer), the consumer has the right to the following relief from the seller within the warranty period (in the event that the period is not established, within 6 months (2 years from 1 January 2004) after purchase):

1) replacement of the product that is of unsatisfactory quality;
2) elimination of the defect in the product, at no extra cost;
3) reduction in the price of the product; or
4) termination of the contract and refunding of money, except when defects of a good are insignificant.

After the expiration of the guarantee period for storage or sale of a product, the sale of such products in the Republic of Lithuania is prohibited.

**Warranty Term**

The Civil Code of the Republic of Lithuania establishes a general warranty term of 6 months during which the buyer can make a claim to the seller concerning the defects in a particular product, provided that the defect(s) was not discussed between the parties before delivery of the product.

**Point of Interest**

*According to the Law on Consumer Protection, the 6-month warranty period applies only when the seller establishes no warranty term. Therefore, by implication, the seller is given the possibility of setting a shorter warranty term. The Civil Code, however, establishes that in such cases the general 6-month warranty period must be applied. In practice, warranty terms shorter than 6 months are established and consumer protection institutions seem to raise no objection.*

**Product Safety**

The Law on Product Safety provides that products entering the market and used for personal or household purposes must be safe. The law does not apply to: products that enter the market as antiques; products that need to be repaired or require additional processing if the supplier informs the consumer of this fact; products for exclusive commercial use; and products supplied to the market before the law comes into force.

Article 3 of the Law on Product Safety gives the following definition of the term “safe good”: any good whose ordinary use, as defined by the producer or as reasonably foreseeable, including prolonged use, does not cause any risk to consumers’ lives or health, does not cause a risk greater than permitted by legal acts and is consistent with a high level of consumers’ safety, taking into account:
1) the parameters of the product, its standards, packaging and intended usage, and care during use;
2) the effect on other products, if it is reasonable to foresee that it will be used in combination with other products;
3) the presentation of the product to consumers, notices on the product or its packaging, the user’s manual and instructions on its destruction after use, as well as other information provided by the producer; and
4) groups of consumers, particularly children, who may be at a greater risk through the use of the product.

“Safe service” is defined as any service that is rendered on established terms and is consistent with legal acts, at the time of its supply or afterwards, and causes no risk or a risk to consumers’ lives or health which is not greater than permitted by legal acts.

Notably, the possibility of a higher level of security or of obtaining other products with less risk in use is not a reason to regard the product as unsafe if the product satisfies the safety requirements established by legal acts.

Under the terms of the Law on Product Safety, a “producer” is defined as a person that has properly registered its activity in compliance with applicable legislation and:
1) has produced the product or publicly announced the product’s production through marking the product with its name, trade mark or other definitive mark;
2) acts as a representative of the producer or itself imports the product when there is no representative of the producer;
3) stores the product and/or packages the product, indicating himself as a producer of this product;
4) as a participant in the supply of the good or service may have an influence on the safety of the product.

A producer, importer, seller or service supplier is required:
1) to provide only safe products to the market;
2) in all established, normal or foreseeable ways to provide consumers with information on risks related to the product;
3) having discovered that the product is not safe, to inform consumers, the National Consumer Protection Council, appropriate controlling institutions and to withdraw the product from the market;
4) to compensate damages inflicted upon consumers by unsafe products.
In case of a breach of requirements under items 1-3 mentioned above, the controlling institutions have the right to restrict access to the market by:

1) temporarily stopping or prohibiting any appearance of the product on the market or obligating the producer, seller or supplier to eliminate the product’s harmfulness or safely destroy the unsafe product;
2) requesting withdrawal of the product from the market (if the producer, seller of goods or supplier of the service does not take action in a timely manner, or if it is not possible to quickly determine the producer, seller or supplier, the controlling institutions are authorised to withdraw the defective product from the market);
3) prohibiting advertisement of the defective product or requesting its termination.

The liability of an importer that violates its duties as specified in the Law on Product Safety is identical to that imposed on the producer. The seller is held responsible only if the producer cannot be identified.

Any agreements releasing a producer, seller of goods or supplier of services from liability for damages caused to consumers due to the fault of the producer, seller or supplier are automatically void.

The producer, seller or supplier of services may be relieved of liability for the delivery of an unsafe product to market if it proves that:

1) the unsafe product was not delivered to the market;
2) the product became unsafe after delivery because of the actions of third persons in improperly (negligently) transporting or storing the product or for other reasons;
3) the state of scientific and technical knowledge at the time the product was put into the market was not such as to enable the danger to be discovered;
4) the consumer used the product improperly thus causing harm to himself;
5) the unsafe quality of the product arose because of unforeseen circumstances (force majeure).

In cases when unsafe goods or services are delivered to the market or there is a failure to withdraw them from the market, the National Consumer Protection Council has the right to investigate and impose a warning or fine amounting to LTL 80,000 (appr. EUR 23,170). Economic sanctions must be imposed within 3 months after the date on which the infringement was discovered, unless the defective product has caused harm to the health or life of consumers. In addition to economic sanctions, the offender may be asked to cover the cost of damages to consumers caused by the unsafe product.

**Point of Interest**
The Law on Product Safety establishes the concept of strict liability (i.e. liability without fault) for producers, sellers or suppliers of services.

If the controlling institution withdraws the defective product from the market, it has a right to absolute reimbursement for any expenses.

If product safety experts conclude that services or samples of goods are not safe, all consignment samples taken from or all services provided by the service supplier from the moment of the finding are considered to be non-safe.

After they are rendered, decisions or resolutions of the National Consumer Protection Council and other controlling institutions that apply market restrictions or impose sanctions may be appealed against within 20 days to the Administration Court as prescribed in the Law on Administrative Justice.

Consumer Information

Under the Law on Consumers Protection, consumers are entitled to receive, in the Lithuanian language, comprehensive and accurate information concerning the terms under which goods and services are purchased, their quality, directions for use, a description of the warranties and exchange period, procedures for the termination of the contract for goods or services, and other relevant information that has significance to the consumer. The duty to provide such information to the consumer and its accuracy are the responsibility of the seller of the good or service supplier. If the consumer was not provided with relevant information and/or it was inaccurate or fraudulent, and, as a result, the goods or services were not fit for their intended use, the consumer may refer to the State Food and Veterinary Service or State Non-Food Inspection or to the court for protection of its infringed rights.

Article 16 of the Law on Competition puts additional safeguards on presentation of correct information to the consumer. In particular, it prohibits as unfair competition the following:

1) the intentional use, by another economic entity, of any mark identical or similar to the name, registered or unregistered well-known trade mark, or another reference having a distinguishing feature, if this causes or may cause confusion with that economic entity or its activity, or when an effort is made to unfairly use the reputation of that economic entity (through its mark or reference), or where this may cause injury to the reputation (or the mark or reference) of that economic entity, or cause a reduction in the distinguishing feature of the mark or reference applied by that economic entity;

2) conveying a misleading impression of an economic entity by providing in any way incorrect or unjustified information about the quantity, quality, components, properties of usage, place and means of manufacturing with their usage, processing or another possible usage
(the information above on the place of manufacture of a good implies an association with quality, reputation or other properties of this good);

3) the use, transfer or publication of information that is a commercial secret of another economic entity without its consent, or obtaining such information from persons with no right to transfer such information in order to compete, seek benefit from such information or cause damage to the economic entity;

4) inducing an employee of a competing economic entity to terminate a contract or fail to carry out all or part of its obligations, for its own benefit or to cause damage to any other economic entity;

5) imitating the product or packaging of another economic entity, by copying its external shape or package colour or other distinguishing feature of the product, if such action may mislead others in determining the identity of the product, or such action is taken with the intent to unfairly gain profit through the use of the reputation of another economic entity;

6) providing incorrect or baseless information about an entity’s managers, the skills of its employers, its legal, financial or other state of its affairs, if such action may cause damage to the economic entity;

7) the use of advertising considered misleading under Lithuanian law (e.g. emphasize a fictitious exclusiveness of a trade company or its goods; misleading consumers through false information regarding the quality of goods, their characteristics, the place and manner of their production or the amount available for purchase and price of sale).

If consumers are misled by false advertising and as a result suffer losses, the advertiser must reimburse consumers for such losses.

**Liability**

Rules on the supply of goods and services that infringe upon consumer rights or exempt or limit the manufacturer, seller of goods or supplier of services from liability are prohibited.

Furthermore, any moral harm inflicted upon the consumer by an infringement of his rights should be compensated by the offender.

Upon the restoration of the rights of an injured consumer, other liabilities established by laws may also apply to the offender(s). In addition to the liability remedies provided in the Civil Code, the Code of Administrative Violations establishes other types of remedies, namely: the warnings; confiscation of goods and equipment; and the prohibition of commercial activities. The Code of Administrative Violations sets forth a wide range of fines, including fines of up to LTL 30,000 (app. EUR 8,675). The Competition Council may also impose fines on economic entities of up to 10% of their total annual gross income for behaviour defined as unfair competition.
Further, article 309 of the Criminal Code of the Republic of Lithuania establishes criminal liability for the production, sale or storage of counterfeit goods. Article 311 of the Criminal Code provides for sanctions for consumer deception. The sanctions for both of the aforementioned crimes vary from penalties of up to LTL 125,000 (EUR 36,148) to a prison term of up to 6 years.