

Consumer protection options for one-sided contracting in the financial sector

Abstract

This thesis analyses the problems between consumers and business professionals in the financial sector. The author has chosen this topic because it seriously impacts everyone who intends to sign a contract for financial services. The significant imbalance between the contracting parties brings a risk that the stronger and more informed party will abuse its position to gain a disproportionate advantage. A legal system tries to redress this imbalance through the legal institutes for consumer protection. The law maker seeks to prevent the undesirable events that have occurred in the past and continue to occur by interfering with private law relations because of the public interest in consumer protection. The aim of the thesis is to provide an overview of the available options of consumer protection and to evaluate legal institutes that are the most effective for consumers.

The thesis is primarily based on the analysis of the regulations and 1 legal publications, conceptual documents prepared by the European Union bureaucracy. Furthermore, the analysis presented here, evaluates the implementation and adoption of the European directives and the approach of the courts in selected Member States in the review of unfair terms. This thesis addresses numerous examples of transgressions and misinterpretations of laws regulating the financial sector, have been identified not only during the author's legal practice, but also documents that this practice continues by analysis some recent court decisions in the area of consumer protection.

This thesis has seven chapters including the introduction and the conclusion. Chapter 2 deals with the development in the area of consumer protection and effective European and Czech legislation with legislative amendments expected to be passed in the coming years. Chapter 3 is focused on the procedure of the contracting process between the financial institution and the consumer. The methods of consumer protection through mandatory advice, the submission of standardized overview forms, the definition of target markets, or the review of the adequacy of contractual arrangements, as well as the potential risks associated with the use of unfair commercial practices are analyzed in the four subsections. Chapter 4 defines the elements of the preventive consumer protection and options how to prevent the undesirable events in a timely manner through the increased information obligations of the business professionals or calling for self-regulation. Chapter 5 deals with private and public consumer

protection measures and assesses the benefits of court review and non-applicability of unfair contractual terms. Further sections discuss options of having the right of withdrawal from the agreement as well as the importance of ensuring continuous administrative supervision. Chapter 6 is divided into two sections devoted to out-of-court dispute resolution and litigation procedures conducted either individually or collectively. The final part of the thesis summarizes the various legal institutes providing protection to the consumer and compares their benefits and disadvantages in relation to the financial sector.

Keywords:

Unfair terms, unfair commercial practices, consumer protection, self-regulation, information obligation