

CONSUMER PROTECTION AND PROTECTION OF USERS OF FINANCIAL SERVICES

CONSUMER PROTECTION

2.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Building the capacity, expertise, and role of consumer NGOs.	2014		√	
Continue work on consumer education and the implementation of topics related to consumer protection in the primary and secondary schools curricula.	2014		√	
Promotion of consumer protection rights and interests on the local government level.	2013		√	

CURRENT SITUATION

In June 2014 the Serbian Parliament adopted the currently applicable Law on Consumer Protection (hereafter: the Law), effective from September 2014. This is the third piece of consumer protection legislation aimed at further improving the protection/position of consumers compared to the previous legislative solutions. The Law was changed to a lesser extent in 2016, when the provision of Article 11 of the Law ceased to be valid due to the implementation of the Law on Advertising as well as during 2018, when certain provisions ceased to apply due to the beginning of the implementation of the Law on Protection of Financial Services Users in Distance Contracts.

The starting point for the adoption of the Law was the 2013-2018 Consumer Protection Strategy. Apart from elements of the EU *acquis communautaire*, the provisions of the Law are inspired by and based upon Article 78 of the Stabilization and Association Agreement (SAA), stipulating that contracting parties will promote and provide, *inter alia*, supervision of the implementation of rules by the relevant authorities and enable simple and efficient consumer dispute resolution.

One of the most important concepts introduced by the Law is the protection of the collective interests of consumers, which aims to sanction unfair business practices and unfair contract terms. Under the Law, if consumer protection associations duly registered with the Ministry of Trade, Tourism, and Telecommunications (hereafter: the Ministry) establish that a trader has breached the collective interests of consumers, by means of unfair business practices or by contracting unfair terms, they are entitled to approach the Ministry with a request to initiate proceedings to protect such interests. On the basis of such a request, or by virtue of its office, the Ministry may initiate administrative pro-

ceedings or require the trader to cease violating the collective interest of consumers. This seems to be a significant improvement in comparison to the previous law.

In accordance with EU guidelines on active consumer protection policy, the Law devotes significant attention to the effective resolution of consumer disputes. Court fees are waived for consumer disputes with a value not exceeding RSD 500,000 to encourage consumers to "fight for their rights" in court (previously the court fees were in most cases disproportionate to the value of the claim). As for the out-of-court settlement procedure for consumer disputes, the Law stipulates that the Ministry must publish the list of bodies meeting the requirements for such a procedure (the currently applicable list is available on http://mtt.gov.rs/download/lista_tela_vansudsko_resavanje_sporova_9.pdf).

The Law further abolished the possibility of imposing the repair of goods on the consumer within the first six months of purchase, meaning that repair is only possible with the express consent of the consumer. In the case of a lack of conformity of goods or services within six months of purchase, the consumer is entitled to choose between a replacement, a corresponding price reduction, or a refund. A significant improvement introduced by the Law is the expansion of the misdemeanour liabilities of traders, including cases when the trader does not resolve a complaint within the term and in a manner acceptable to the consumer.

Traders are required to keep records of received complaints, and the inability of consumers to deliver the packaging of goods to the trader cannot be an obstacle for resolving a complaint or a reason for refusing to remedy the lack of conformity. The deadline for responding to a complaint is eight days, whereas the deadline for the resolution of a

complaint acknowledged by the retailer cannot exceed 15 days from the date of the filing of the complaint, or 30 days for technical goods and furniture.

The Law created the basis for a higher level of consumer protection in certain fields, e.g. contracts for the sale of goods and services of general economic interest. Providers of services of general economic interest are required to form a committee for resolving complaints, consisting partly of representatives of consumer organizations registered with the Ministry.

In addition, the Law sets forth that elementary and secondary school curricula should include education on the role and basic principles of consumer protection, and that the Ministry as well as consumer organizations should cooperate with schools in educating students on consumer rights and responsibilities.

Additionally, the Law introduced new and expanded the current powers of market/tourist inspectors, aiming to resolve problems that occurred when most of the powers were transferred to consumer organizations whose capacities were insufficient for the effective resolution of consumer complaints at that point.

POSITIVE DEVELOPMENTS

Compared to the previous year, there have been certain improvements in the expansion of the scope of activities undertaken by consumer protection associations, including: educating consumers about their rights, organizing roundtables to discuss important issues in this area, performing tests for a large number of consumer products and providing information to consumers about detected irregularities, etc. The websites of these associations provide an increasing number of useful publications for consumers and presentations of on-going issues in this area, which (together with the above described activities) enables a better fulfilment of their main role.

Positive developments are also visible in relation to educational activities on consumer-related topics organised by both local self-government units and the competent state authorities (including primarily ministries, inspections and courts), such as staff trainings, conferences and roundtables, aimed at raising their competences and implementation of EU standards.

REMAINING ISSUES

Although the Law formally established a deeper balance in the relationship between traders and consumers, the results in practice demonstrate that this is still far from real equality. According to the 2017 Report on the Activity of the National Consumer Complaints' Registry, the Consumer Protection Sector within the Ministry received 1,459 consumer complaints in 2018 over a toll-free phone number, while the regional consumer councils received a total of 26,823 consumer complaints (which is a significant increase compared to 16,928 consumer complaints in 2017). A large majority of complaints received (around 80%) concerned the supply of goods (mostly footwear, mobile phones, IT equipment and appliances), while the remaining around 20% were connected with the supply of services (most often public utilities and telecommunication services). Compared to the report from 2016, there are no major oscillations, either in the number of complaints or their structure.

Although improvements in terms of consumer education and raising consumers' awareness of their rights are visible, campaigns should be actively continued nationwide to ensure a better balance of consumer awareness in all regions of Serbia. By far the largest number of consumer complaints is still filed in the region of Belgrade, and to change this trend it is necessary to increase the number of activities throughout Serbia with the aim of raising consumers' awareness of their rights and encouraging them to seek protection.

FIC RECOMMENDATIONS

- Building the capacity, expertise, and role of consumer NGOs.
- Continue work on consumer education and the implementation of topics related to consumer protection in the primary and secondary schools curricula.
- Promotion of consumer protection rights and interests on the local government level.

PROTECTION OF USERS OF FINANCIAL SERVICES

2.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Further harmonization of regulations on the protection of consumers of financial services with international and EU principles.	2012		√	
Further education of users of financial services regarding their rights.	2014		√	
Harmonization of the announced legislation with the existing legislation already in force.	2016		√	

CURRENT SITUATION

The rights of users of financial services provided by banks, financial leasing providers and traders, as well as the terms, conditions, and manners of exercising and protecting such rights, are regulated by the Law on the Protection of Consumers of Financial Services (hereinafter: the LPCFS), with the latest implemented changes from 2015.

In order to protect the rights of users of financial services in the right way, the National Bank of Serbia (NBS), has adopted a set of decisions, in particular the Decision on Handling Complaints of Financial Service Consumers. This Decision prescribes the manner of filing complaints by users of financial services to the provider of financial services and to the NBS, as well as their handling of these complaints. Financial service providers are obliged, inter alia, to issue a receipt certificate of the complaint, to enable the consumer to access the form for filing a complaint on its website and to post a clear and easy-to-spot notice with information on the procedure for the protection of rights of users of financial services.

In order to create a legal framework for a uniform solution to the problem of loans indexed to Swiss francs, the Law on the Conversion of Housing Loans Indexed to Swiss francs (hereinafter: the Law) has been adopted, and it came into force in May 2019. The Law applies only to natural persons who have executed a housing loan agreement with a bank indexed to Swiss francs (CHF) and does not apply to debtors who have already converted their debt into euros under one of the earlier models. In accordance with the Law, Banks had a deadline of 30 days from the entry into force of the Law to submit to debtors a proposal to convert loans from Swiss francs into euros, with a capital write-off of 38% and a new interest rate valid on 31 March 2019, which, according

to some unofficial estimates, was accepted by about 90% of debtors. The Law provides that this kind of debt write-off will not be treated as personal income and will be tax free. Supervision over the implementation of the Law is carried out by the NBS, in accordance with the Law on Banks, through the procedure of direct and indirect control, and if the NBS determines irregularities, it may order banks to eliminate them against all users, regardless of whether a conversion agreement has been concluded.

POSITIVE DEVELOPMENTS

In order to further protect users of financial services, the NBS rendered a Decision on Detailed Conditions of Financial Services Advertising, which prescribes general and specific conditions for advertising financial services, as well as the obligations and responsibilities of the financial services providers related to this advertising. In accordance with the decision, the NBS will control how financial service providers advertise, whether they act in accordance with the Decision, whether an ad message lasts long enough for the average user to be able to read and/or hear it appropriately, whether the appropriate text font is used depending on the advertising method, etc.

General technological development and the increasing importance of e-business in modern society have contributed to the development of new ways to offer and advertise financial services, which has led to the need to further regulate the rights of financial services users in the situation when agreements regarding financial services are executed by means of distance communication, and the conditions and manner of exercising and protecting those rights. Recognizing this need, as well as the need for the harmonization of domestic legislation with EU law, the Law

on the Protection of Consumers of Financial Services with Respect to Distance Contracts was adopted and became applicable in September 2018. Users are protected from being provided with and charged for services they have not requested, since it is explicitly prescribed they are to be exempt from any obligation regarding services they have not ordered. The benefits of this regulation, inter alia, are strengthening the confidence of users of financial services in distance contracting, reducing expenses for financial services providers, as well as establishing a single legal framework for the protection of users of financial services in distance contracting.

According to the Report of the Department for Financial Consumer Protection, the NBS received 655 premature complaints for 2018, which was less than the average number of premature complaints in the last ten years.

REMAINING ISSUES

The Report of the NBS reveals that premature complaints still account for a significant share of the total number of complaints in 2018, which indicates that many users of financial services are still not familiar with the complaints procedure. In this respect, continuous education of consumers of financial services about their rights and the way to exercise those rights is still needed.

Despite the fact that LPCFS allows contracting for charges and fees paid by the borrower, and despite the opinion of the Supreme Court of Cassation of Serbia (hereinafter: SCC) that the right to collect fees and charges for banking services based on credit operations is not excluded by law, a large number of lawsuits for the annulment of clauses relating to the said fees creates pressure on the court system,

while inconsistent court practice leads to legal uncertainty for users of financial services.

Prior to the adoption of the Law, the SCC took a stance that the clause on the indexation of loans to CHF is null and void, unless it is based on reliable written proof that the bank obtained the lent assets in Serbian dinars (RSD) through its own debiting in that currency and that before the contract conclusion the bank had delivered to the client complete written information about all the business risks and economic and financial consequences that would occur in case of applying the clause. In its legal position, the SCC does not specify on which legal regulations its expressed views are based, so this legal position creates legal uncertainty. It is unclear what happens with loans already repaid and what is the impact of the execution of a conversion agreement on an ongoing dispute between the debtor and the bank - this will be determined by a court in each individual case, depending on all the circumstances of that particular case. Given that according to the law of the Republic of Serbia, legal positions taken by the SCC are not binding to lower courts, it remains unclear whether such courts will respect the legal position of the SCC and order loan conversion, which is also not stipulated in any regulation, or accept lawsuits and pass judgments for the termination of loan contracts due to changed circumstances, or whether users who do not agree to conversion will initiate new disputes by referring to the SCC's legal position that the CHF indexation clause is null and void. Although the Law covered over 17,000 users and 15 banks, all of the above shows that certain categories of debtors were left out and, taking into account the adopted legal position of the SCC, the impression is that many issues remain unresolved and open to further consideration.

FIC RECOMMENDATIONS

- Further education of users of financial services regarding their rights.
- Harmonization of court practices with new regulations in force.
- Clear and unambiguous definition, in the regulations, of the possibilities for contracting for fees of financial service providers.