CONSUMER PROTECTION AND PROTECTION OF USERS OF FINANCIAL SERVICES

CONSUMER PROTECTION

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.

During 2019, the Government adopted a program for the development of e-commerce for the period 2019-2020 which determines the specific goals of improving e-commerce in the domestic market as well as the action plan for the implementation of the program.

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 proceedings or require the trader to cease violating the collective interest of consumers.

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 and out of courts (Ministry publishes the list of bodies meeting the requirements for such out of court procedure).

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.

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.

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.

COVID-19

N/A

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, includ-

ing: 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 as well as on the activities of the Government to improve the framework for development of e-commerce, bearing in mind that e-commerce, according to the research of the Serbian Chamber of Commerce, doubled during the state of emergency compared to the time before the COVID-19 pandemic, and the growth of e-trade is expected in the future.

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 Report on the work of the National Register of Consumer Complaints for 2018 (the report for 2019 has not been published), there is a noticeable increase in consumer complaints compared to the previous year. It is to be expected that this moment will continue especially if one takes into account the increase in the volume of e-commerce.

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

FIC RECOMMENDATIONS

- Active participation and involvement of FIC in the drafting of the announced new Law and Consumer Protection Strategy until 2024, in order to improve this area. (2)
- Building the capacity, expertise, and role of consumer NGOs. (2)
- Continue work on consumer education and the implementation of topics related to consumer protection in the primary and secondary schools curricula. (1)
- Promotion of consumer protection rights and interests on the local government level. (1)

PROTECTION OF USERS OF FINANCIAL SERVICES

CURRENT SITUATION

The rights of financial services consumers provided by the banks, issuers of financial leasing and merchants, and the terms/conditions and manner in which these rights are exercised and the protection of these rights are regulated via the Law on the Protection of Financial Services Consumers (hereinafter: the LPCFS) with its latest amendments of 2015. In addition to the aforementioned law, overall technological development and the increasing significance of doing business electronically in modern society, has contributed to the development of new ways of sending offers and advertising financial services, which has created a need for additional

regulation in this area through the rendering of the Law on the Protection of Financial Services Consumers in Distance Contracts, which entered into force in September 2018. The advantages of this regulation are strengthening the trust of financial services consumers in distance contracts, reduced costs of financial services providers, and the establishment of a unique legal framework for the protection of users in negotiating distance contracts on the provision of financial services. For the purpose of creating a legal framework that acts as a unique solution to the issue of loans indexed in Swiss Francs, the Law on the Conversion of Housing Loans Indexed in Swiss Francs (hereinafter: the Law) was adopted, which entered into force on May 2019. The Law applies exclusively to private individuals who have concluded housing loan agreements with banks indexed in Swiss Francs (CHF), while this Law does not apply to those who have already converted their debt into the Euro, in accordance with some earlier available model.

To ensure that the rights and obligations of financial services consumers and providers are clearly and comprehensively regulated, the National Bank of Serbia (hereinafter: the NBS) has rendered a set of decisions regulating the area of the protection of financial services consumers. The following are the most significant of these Decisions. From April 2019, the Decision on Detailed Conditions of Financial Services Advertising, which regulate, in detail, the overall and specific conditions of advertising financial services and the obligations and responsibilities of financial services providers which refer to this type of advertising. In line with the decision, the NBS shall control how financial services providers advertise, whether or not they act in accordance with the decision, i.e. whether the advertising message lasts long enough so that the average consumer can read it unhindered, and/or hear the message, uses the right font which must be used depending on the advertising form, etc. Furthermore, the Decision on Handling Complaints of Financial Services Providers, the latest version of which entered into force in July 2019, regulates the manner of submitting complaints of financial services consumers to the providers of financial services and the NBS, and how these institutions are to respond to these complaints. Financial services providers are, inter alia, obliged to issue confirmation of the receipt of a complaint, to allow clients to submit complaints via the providers' websites, as well as to visibly display on their websites, notifications containing information on the protection of the consumer rights process. Pursuant to this Decision, financial services providers are considered to be banks, financial lessors, payment institutions, electronic money institutions, and the public postal operator in relation to payment services provision and electronic money issue.

On the other hand, the manner in which the rights and interests of the insured, policyholders, insurance beneficiaries and third injured parties and the manner of mediation in the settlement of claims for damages, complaint filing by the insurance service consumer and the handling of such complaints is regulated via the Decision on the Manner of Protecting the Rights and Interests of Insurance Service Consumers which entered into force in November 2015. Additionally, the protection of insurance service users is regulated by the Law on Insurance from 2014. An important segment of informing insurance policyholders is pre-contractual information, defined in Article 82 of the Insurance Law. In the pre-contractual information, the insurer / insurance company transparently provides all relevant information before concluding the insurance contract, including the manner of protection of the rights of insurance policyholders and protection of interests of insurers, manner and deadline for filing claims, information on the supervisory body for insurance companies. Both the manner and the protection of the rights of the insurance contractor with that body. Pre-contractual information must be signed by the policyholder, and must be part of each case. If the policyholder and the insured are not the same person, and it is a case of collective insurance or insurance that is a related contract, the insurer is obliged to provide the insured with a set of pre-contractual information, as well as to provide the insured with insurance conditions applicable to the insurance contract.

In 2019, the implementation of the Law on Personal Data Protection began, which is especially important for clients - individuals. The field of personal data protection in recent years in the world and in Europe is very actual, and all market participants (banks, insurers, pension funds) strive to comply with this topic and regulations, use various tools / software, provide mandatory notices on the processing of personal data, it is possible to file complaints, consents are collected for contacting for marketing purposes. All of this is important so that both customers and operators are aware and understand the importance of processing personal data, to reduce the risk of misuse of personal data and to make the processing consistent with the purpose. Personal data processed by financial market participants are numerous: name, surname, identification document number, address, telephone, e-mail, but also data such as health status.

Not intending to diminishing the significance of other NBS decisions in terms of the protection of financial services consumers, we would like to emphasise the importance of the Decision on Terms and Method of Calculating the Effective Interest Rate and on the Layout and Content of Forms Handed out to Consumers, with the latest amendments which apply as of January 2019. The aforementioned decision clearly prescribes which elements are included in the calculation of effective interest rates, as the true price and cost of funds thus allowing financial services consumers to clearly compare the offers of various financial services providers. Furthermore, by prescribing the various forms that are given to the consumer in the process of concluding an agreement, we believe that the financial services consumer is fully informed both in terms of all costs related to the product in question, and in terms of foreign currency borrowing risk and the variable nominal interest rate.

COVID-19

The outbreak of the pandemic caused by the COVID-19 virus did not result in the rendering of regulation which would especially protect the financial services consumer as defined by the LPCFS. The measures rendered aimed to preserve the stability of the financial system as a whole and to assist both the people and the economy. One such measure rendered was the Decision on Temporary Measures for Preserving Financial System Stability whereby the banks were obliged to provide all debtors (private individuals, agricultural producers, entrepreneurs and companies) with a suspension of debt payments (moratorium) which may not be shorter than 90 days (which in practical terms means three monthly loan instalments).

However, the outbreak of the pandemic caused by the COVID-19 virus, perhaps now more than ever has imposed the need for financial services to be digitalised to the highest degree possible, which is evident in particular, in the area dealing with payment services where the NBS (by issuing various instructions) regulated the payment of funds to consumer who were not able to personally visit the banks' premises and did not have the established payment instruments in place through which to initiate transactions.

Insurers / insurance companies even before the outbreak of extraordinary circumstances started selling policies through various online services (through sites for certain types of insurance, eg travel, property), but also additionally enabled the submission of claims, as well as the submission of complaints via e-mail addresses and via the site, in addition to the already standard ways of sending by mail or delivery in organizational units in person.

POSITIVE DEVELOPMENTS

As regards the recommendations provided in last year's text on the further education of financial services consumers in regard to their rights, we believe that said has been partially fulfilled. The NBS, as strategists in the field of financial education, has a section on its website dedicated to financial services consumer protection, whereby financial services consumers can find detailed information on all the concepts of financial services as well as their rights. In this regard, it cannot be said that no progress has been made. However, data from NBS's 2019 Report show that less than 15% are well-founded complaints (a total of 1,976 complaints were filed, 1,297 complaints were unfounded, 280 complaints were founded, 399 complaints are ongoing). This data clearly indicates that financial services consumers remain unaware of the rights and obligations of providers and financial services consumers, and, we believe that further efforts of the NBS are necessary to educate said consumers (not only through information posted on the website, but also through further education available via other media forms).

In the section in the previous year's recommendations where regulations are to clearly and unambiguously define the possibility to negotiate financial services providers' fees, we must admit that there has been no improvement here. Actually, the situation is much worse than it was in 2019. The number of judicial proceedings as a result of loan processing fees is continually increasing by the day (on 3 March 2020 there were over 40,000 active proceedings regarding this matter). Judicial practices between the courts of general jurisdiction and the commercial courts (competent in terms of company agreements) are unequal. The banks continue to charge loan processing fees, despite the fact that they are hit with dozens of new lawsuits, every day. In 2019, the NBS did not publish its stance on this issue, and the position of the Supreme Court of Cassation which is that the negotiating of loan processing fees is permitted, is interpreted by the courts such that said negotiating is permitted only if the client is clearly presented with what constitutes the structure of these fees. It is not enough to simple present the client with the fee amount, rather, the banks are asked to present the fee structure to clients (i.e. its components).

Additionally, one of the recommendations was that it was necessary to harmonise case law with the new regulations in force, such as the Law on the Conversion of Housing Loans Indexed in Swiss Francs, bearing in mind that prior to the adoption of the cited law, the Supreme Court of Cassation took the position whereby it established that the clause on the indexation of loans in the CHF is deemed null and void, unless the bank has reliable written proof that it obtained the lent dinar funds through its own borrowings in this currency and that before concluding the agreement, it provided the borrower with complete, written information on all risks arising from negotiating the application of such a clause. As the law failed to include all categories of consumers indexed in Swiss Francs, disputes are continued to be filed against the banks, in particular, by consumers who repaid their obligations prior to the entry of said law into force or those who did not accept conversion, however the number of this second type of dispute is significantly less.

REMAINING ISSUES

From the sector report, it is possible to observe that a large number of unfounded complaints in the total number of complaints indicates that consumers still turn to the NBS, even if there has been no violation of their rights, which in turn indicates the fact that many financial services consumers remain unfamiliar with the regulated rights and obligations in the area of financial services consumer protection. In this regard, the need for constant education of financial services consumers is still necessary, not only through the NBS website, but also through other forums where information is made available to the public through various types of education.

The rationales of a large number of court judgments regarding loan processing fees, indicate that the judicial functionaries do not have the necessary knowledge to make legal decisions in the field of banking. Here, it is necessary for the NBS, in cooperation with the Association of Serbian Banks and representatives of eminent law firms (those who deal with banking), to organise the constant training of judicial officers, in order to educate and acquaint them with banking regulations.

The most urgent possible adoption of a sector-based solution to the problem related to loan processing fees, i.e. disputes arising from the collection of loan processing fees by banks. We see the adoption of a special law (similar to loans in Swiss Francs) or the authentic interpretation of the provisions of the Law on Obligations, as the only possible way to resolve these disputes burdening the banking system, both costly and operationally. This special law should clearly answer the following key questions: are the banks allowed to negotiate fees, i.e. the cost of loan processing? is it enough that the fee is presented to the client as a percentage, i.e. in an absolute amount? or is it necessary to show the client the structure of the fee, i.e. cost relations? The current situation is absolutely unsustainable and leads not only to legal uncertainty, but also to the paradoxical situation in which a few days after a bank pays out a loan to a client, that same client files a law suit against the bank. In addition to banks, the judicial system itself is under great pressure due to the daily increase in the number of new lawsuits and the inability to process them all.

The pandemic caused by the COVID-19 virus has additionally stimulated the need for digitalisation, and it is therefore necessary to create a legal framework for the electronic issuance of bills of exchange, as soon as possible. In practice, a bill of exchange is a widespread means of securing loan agreements and other, non-banking products, and it is necessary that the method of issuing bills of exchange follows the development of modern society and in that direction, it is necessary to enable the electronic issuance of bills. Namely, without the electronic issuance of bills of exchange, just signing a loan agreement with a qualified electronic signature is not practical, as a personal visit to the branch is required for the issuance of bills of exchange.

Furthermore, the pandemic caused by the COVID-19 virus has imposed a need to increase the legal limit for the negotiating of remote financial services without the use of a qualified electronic signature. The Law on the Protection of Financial Services Consumers in Distance Contracts has provided for the possibility of negotiating financial services by using means of distance communication, and therefore including the negotiating of a distance loan agreement. The cited law has envisaged that "If the law requires a specific type of financial service contract to be concluded exclusively in writing, the distance contract may be concluded also by using a means of distance communication in the form of electronic document, bearing a qualified electronic signature, in accordance with the law governing electronic signature." It is evident in this provision that any financial services agreement, regardless of its amount, may be concluded at a distance, with the necessary qualified

electronic signature. However, the legislator has recognised that a large number (especially private individuals) do not have a qualified electronic signature certificate, and it is therefore envisaged that a distance contract "with a value of up to RSD 600,000 may be concluded by a consumer without using his/her qualified electronic signature, if he/she gave consent to conclude that contract using at least two elements of consumer identity verification (authentication) or using an electronic identification scheme with a high level of reliability," We feel that digitalisation in the provision of finance services on the one hand, and the fact that a large percentage of private individuals do not have a qualified electronic signature, on the other, imposes a need to increase the given limit and thereby allow for financial services of greater value to be concluded using at least two elements of consumer identity verification (authentication) or using an electronic identification scheme with a high level of reliability, as, the use of, for example, e-bank and OTP (one time password) for concluding agreements, fulfils all security standards.

Also, there are no clear instructions or guidelines on how to enter a case in the Register of Complaints where the complainant expresses dissatisfaction on several grounds. In that case, the insurer should enter only one complaint and choose one of several grounds prescribed by the NBS instruction, and assessing it as primary, or for the same complainant should enter several consecutive complaints, entering each basis of complaint separately, even if it is the same applicant. objections and the same insurance contract. In practice, it is most common for clients to file an objection in an improper form without often providing primary data or evidence to substantiate their allegations, which puts insurers in a position to defend the unfoundedness of such allegations in later statements of the NBS. by the objector.

In addition, an increase in the number of both reported damages and complaints filed by lawyers on the basis of material and non-material damages from liability insurance due to the use of a motor vehicle was noticed, which increases the costs of processing such requests to insurers in settling attorney's fees. The insurer often encounters premature complaints, especially in the part of the amount of future insurance compensation, when the processing of the request for compensation is still in progress and the first instance decision has not been made.

FIC RECOMMENDATIONS

- Further educating financial services consumers on their rights, as well as insurance service users. (1)
- Educating judicial officers on banking operations and insurance sector. (2)
- Resolving disputes initiated by loan processing fees via a special law or the authentic interpretation of the existing law. (3)
- Permitting the electronic issue of bills of exchange. (3)
- Regular workshops and seminars are proposed in cooperation with the NBS and insurance companies, and for the purpose of constructive discussions, exchange of opinions and obtaining instructions and guidelines in the field of finding the best solutions in the field of protection of rights and interests of insurance users
- Increasing the limit stipulated in Article 3, paragraph 3 of the Law on the Protection of Financial Services Consumers in Distance Contracts. (2)