

CONSUMER PROTECTION AND PROTECTION OF USERS OF FINANCIAL SERVICES

CONSUMER PROTECTION

2.25

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2021	√		
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		√	

CONSUMER PROTECTION

CURRENT SITUATION

The National Assembly of the Republic of Serbia adopted a new Law on Consumer Protection, which, while retaining some earlier solutions, provides for a lot of innovation with the aim of improving consumer protection and position in relation to previous solutions. The law entered into force on 19 September 2021, and its application starts after the expiration of three months from the day of entry into force (except for the provisions of Articles 149 to 169, which apply from 20 March 2022).

In addition to referring to the provisions of the Constitution of the Republic of Serbia, the reasoning of the Law also refers to Article 78 of the Stabilization and Association Agreement, which stipulates that the parties will encourage and ensure a policy of active consumer protection in accordance with Community law and the harmonization of the Consumer protection legislation in Serbia with the protection which is already in force in the EU community. When it comes to strategic planning in this area, the Consumer Protection Strategy for the period 2019-2024 envisages legislative measures in order to improve the consumer protection system in accordance with new challenges on the world market and more complete protection in accordance with EU best practice.

One of the most significant innovations brought by the new Law is the significant improvement of the mechanism of out-of-court settlement of consumer disputes (which does not

exclude and does not affect the exercise of the right to judicial protection). The new solution defines out-of-court settlement of consumer disputes as a way of resolving disputes between consumers and traders before the body for out-of-court settlement of consumer disputes entered in the List of bodies for out-of-court settlement of consumer disputes. Proceedings before the body can be initiated by the consumer only if they have previously raised a complaint or objection to the trader and the trader is now obliged to participate in the out-of-court settlement of consumer disputes proceedings before the body. The fine for those who refuse to participate in mediation or do not publish a notice that the buyer has the right to an out-of-court settlement of the dispute is RSD 50,000 (Approximately 425 EUR). Although this way of resolving disputes has existed before, so far, traders in practice avoided participating in the process, they only rejected complaints on goods and referred dissatisfied customers to court, and those consumers often opted not to pursue the matter to court. The law introduces an obligation for the competent courts for resolving consumer disputes to keep records of these disputes and to submit data from the records to the Ministry of Justice.

The law also introduced the so-called "Do not call" register of telephone numbers of consumers who do not want receive calls of traders who offer goods / services by telephone which is kept by the regulatory body responsible for electronic communications, which should prevent or reduce aggressive business practices that exist through multiple telephone calls to consumers. Namely, the consumer who wants his telephone number to be found in the register, fills in the form and submits it to the operator whose network he uses, and the operator forwards the data on the telephone

number to RATEL (The Regulatory Agency for Electronic Communications and Postal Services).

The new law also improved and more precisely defined the complaint procedure (after two years from the purchase, the complaint is declared to the issuer of the guarantee and the law introduces the obligation to receive the complaint for the seller), the obligation to prepare a calculation and specifications of the sale price of the service (for value of services greater than RSD 5,000). the necessary parts of the invoice issued for services of general economic interest is prescribed, and the prohibition of unfair business practices covers all phases of purchase.

The law now introduces the possibility of issuing misdemeanour warrants in the domain of traders' liability, i.e. it prescribes a fixed fine in the amount of RSD 50,000, (Approximately 425 EUR) for legal entities and RSD 30,000 (Approximately 255 EUR) for entrepreneurs, for certain misdemeanours. Longer statutes of limitations are also prescribed, so misdemeanour proceedings cannot be initiated or conducted if two years have elapsed from the day when the misdemeanour was committed (previously, the one-year statute of limitations established by the Law on Misdemeanours was applied).

POSITIVE DEVELOPMENTS

Although the previous law presented a significant step forward in terms of ensuring a high level of consumer protection, during the implementation of the previous law certain shortcomings were observed which affected the unsatisfactory level of consumer protection, which the new law, with its numerous improvements, should take to a higher level.

Also observed is the higher engagement of the Consumer protection association through educations of consumers on their rights, organizing round tables during which significant topics in this area were discussed as well as testing consumer products and informing consumers on perceived irregularities etc.

Positive improvements have also been visible on the at the

level of local administrative units and competent state institutions (including primarily ministries, inspection departments and courts), where, various types of education on consumer protection were organized, such as trainings for employees, conferences and round tables, all with the aim of raising the level of their expertise and implementation of EU standards, as well as government activities to improve the framework for e-commerce development. According to the research of the Serbian Chamber of Commerce, e-commerce has doubled during the state of emergency compared to the time before the COVID-19 pandemic, and the growth of online commerce is expected in the coming period.

The new law should, as previously announced, give greater protections to passengers in tourism, and it is planned to harmonize the consumer rights of Serbian citizens with the new regulations of the European Union on travel in package deals and related travel arrangements.

REMAINING ISSUES

Although the Law formally establishes a greater balance in the relations between traders and consumers, the results in practice still attest to the fact that this relationship is still far from equal. According to the data of the Ministry of Trade, 22,213 consumer complaints were registered in the regional consumer counselling centres in 2020, and only two were resolved out of court, while 16 lawsuits were filed against traders. This trend is to be expected to continue, especially given the increase in e-commerce

Consumer protection associations point out that the competencies of bodies dealing with consumer protection in Serbia are not well regulated, and that the chance to protect consumers more efficiently through the introduction of the institute of collective lawsuits has been missed.

Although there have been noticeable improvements in terms of educating and informing consumers about their rights, it is necessary to actively continue campaigns throughout Serbia in order to balance consumer information in all regions of Serbia.

FIC RECOMMENDATIONS

- Active participation and involvement of the Council in monitoring the implementation of the new Law and the Consumer Protection Strategy until 2024, in order to improve this area;

- Increasing the capacity, expertise and role of the non-governmental sector in the field of consumer protection;
- Ongoing work on consumer education and implementation of topics in the field of consumer protection in primary and secondary education curricula;
- Promoting the protection of consumer rights and interests at the local level.

PROTECTION OF USERS OF FINANCIAL SERVICES

1.33

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Further educating financial services consumers on their rights, as well as insurance service users.	2014		√	
Educating judicial officers on banking operations and insurance sector.	2020		√	
Resolving disputes initiated by loan processing fees via a special law or the authentic interpretation of the existing law.	2020			√
Permitting the electronic issue of bills of exchange.	2020			√
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.	2020			√
Increasing the limit stipulated in Article 3, paragraph 3 of the Law on the Protection of Financial Services Consumers in Distance Contracts.	2020			√

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 policy-

holders 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. Furthermore, the National Bank of Serbia has published Guidelines on minimum standards of conduct and good practice of participants in the insurance market, which, along with more detailed recommendations regarding the manner of pre-contractual information, create preconditions for harmonization with EU regulations, ie the Insurance Distribution Directive. The implementation of the Directive on the distribution of insurance at the EU level in 2018 was postponed by 7 months, at the initiative of a number of Member States, because neither industry nor supervisory authorities were fully prepared to respond to the requirements of the Directive. This is an illustrative example of the complexity of the new rules and the warning that the implementation of these rules needs to be approached carefully.

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.

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. In this regard, the NBS is working on the digitalization of bills of exchange, in the first step for legal entities, and then for individuals, which is necessary to complete the digital process of marketing bank products.

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).

Regarding the last year's recommendations to define clearly and unambiguously the possibility for contracting fees for financial service providers, we acknowledge that certain progress has been made by adopting an amended legal position on the admissibility of contracting loan costs at a session of the Civil Department of the Supreme Court of Cassation, held on September 16, 2021.

With this position, Supreme Court of Cassation has recognized the right of banks to collect costs and fees for banking services, which means that the provisions of the loan agreement which obliges the borrower to pay the loan costs to the bank are not null in case that the bank's offer contained clear and unambiguous data on loan costs and also that they can be expressed as a percentage and charged through the calculation of the effective interest rate, without the obligation of banks to prove the structure and amount of costs covered by the total amount of loan costs, which are stated in the offer accepted by the borrower.

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. Therefore, it would be necessary to amend the Law on the Conversion of Housing

Loans Indexed in Swiss Francs to resolve all doubts that are the subject of litigation.

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 to organise the constant training of judicial officers, in order to educate and acquaint them with banking regulations.

If it turns out in practice that the scope of the Legal Position of the Supreme Court of Cassation on the admissibility of contracting loan costs did not contribute to relieving the judicial and banking system, it would be necessary to consider adopting a legal or any other institutional solution regarding the problem of disputes arising from this situation, especially bearing in mind that the current leads to paradoxical situations that clients file a lawsuit against banks within a few days after the bank pays off the loan and collects the fee. This increases the pressure on the court system on a daily basis due to the daily increase in 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 and IT framework for the electronic issuance of bills of exchange for individuals. 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.

Regarding the insurance sector rules of market behaviour, since it is planned to significantly improve the regulations governing this matter, and as these rules are of great practical importance because they affect the core business of insurance companies (from supervision and management of insurance products to placement and product distribution), continuous and constructive communication between industry and the NBS would be useful before implementing and prescribing new obligations in order to properly assess the level of market development as well as the achieved level of user protection by current regulations and rules.

FIC RECOMMENDATIONS

- Further educating financial services consumers on their rights, as well as insurance service users.
- Educating judicial officers on banking operations and insurance sector.
- Permanent resolving disputes initiated by loan processing fees in line with above mentioned manner.
- Amendments to the Law on Conversion in terms of specifying norms that would clearly define the rights of clients and banks
- Permitting the electronic issue of bills of exchange for individuals
- 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.
- Continuous exchange of opinions and constructive discussions with insurance companies regarding the implementation of rules on insurance distribution, ie regulatory requirements regarding market behaviour.
- Increasing the limit stipulated in Article 3, paragraph 3 of the Law on the Protection of Financial Services Consumers in Distance Contracts, that is, enabling the conclusion of a contract through two-factor authentication or an IT solution that would enable the security without the use of an electronic qualified signature.