

PROTECTION OF USERS OF FINANCIAL SERVICES

1.50

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			√
Permanent resolving disputes initiated by loan processing fees in line with above mentioned manner.	2021			√
Amendments to the Law on Conversion in terms of specifying norms that would clearly define the rights of clients and banks	2021			√
Permitting the electronic issue of bills of exchange for individuals	2021			√
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	√		
Continuous exchange of opinions and constructive discussions with insurance companies regarding the implementation of rules on insurance distribution, ie regulatory requirements regarding market behaviour.	2021	√		
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.	2021			√

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. Suspending education of financial services consumers as initially planned has resulted in practice in the situation wherein clients enter contractual relations with providers of financial services without basic knowledge of the importance of contractual provisions and the honouring of assumed obligations. Thus, the burden of client education on possible consequences of concluding contracts passed onto providers of financial services. The role of the NBS as regulator, and organization trusted by financial services consumers is of utmost importance. We believe that implementing controls of providers of financial services and related fines for established breaches is not sufficient to adequately address the lack of basic financial literacy among financial services consumers, as prerequi-

site for understanding obligations assumed by conclusion of contracts.

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 uniform 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 in 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. Despite expectations that the enormous quantity of litigations conducted for years regarding loan processing fees and determining nullity of currency clauses, which entails huge court and bank expenses, these expectations have unfortunately not been met. The ambiguity of this Law resulted in second-instance court rulings voiding indexations of housing loans in CHF, and the question arises – in which currency should these loans be processed? With reference to this, we believe that it would be paramount for the NBS to issue a formal opinion, because chances of modifications – specifying this by provisions of the law itself - are very slim at the present time, bearing in mind that the RS government will not be formed before the third quarter of this year.

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. However, there should be a two-way media communication because that is the only way to create real effect, which is why we want here to underline the importance of the foregoing client education, which should also be enclosed on the NBS agenda.

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. 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. Unfortunately, recent effective court rulings bear witness to non-recognition of clear communication of banks towards clients as regards contractual obligations.

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

Relevant open communication of the NBS which proves a sincere intention to provide support to resolving remaining issues encountered by banks in their daily handling of complaints of financial services consumers. In that sense, the NBS deserves all praise because it is prepared to step outside its prescribed competences in order to ensure best possible functioning of the banking system.

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 in 2021, the right of banks to collect costs and fees for banking services has thereby been recognized, 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, in our opinion we must work together on ensuring further financial literacy of financial services consumers, 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 com-

plainant 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 the currency clause and 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.
- Promoting mediation as way of resolving litigations between banks and financial services consumers and amending the Law on Mediation would be important in that regard.