

PROTECTION OF USERS OF FINANCIAL SERVICES

2.11

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.	2021	√		
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.	2021			√
Permitting the electronic issue of bills of exchange for individuals	2019		√	
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		√	
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.	2022		√	

CURRENT SITUATION

The rights of users of financial services provided by banks, financial leasing providers, and merchants, as well as the conditions and manner of using and protecting such rights, are regulated by the Law on the Protection of Users of Financial Services (hereinafter: the Law), with the latest amendments that have been in force since 2015. The Law in question has created a legal framework for regulating the position of users of financial services (natural persons, entrepreneurs, as well as farmers) in relation to banks, insurance companies, and other providers of financial services. What is indisputable is that the Law has introduced legal certainty and clarity in the relations between users of financial services and their providers. Namely, rights and obligations are much more clearly and precisely regulated than was the case before the adoption of the named law.

In addition to the aforementioned Law, due to the increasing importance of electronic contract conclusion in the overall digitization process, the Law on the Protection of Users of Financial Services in Distance Contracting was adopted and implemented from September 2018. By adopting the named Law, the regulator recognized the importance of the development of digitization in the process of concluding contracts, i.e., the clear regulation of rights and obligations when concluding contracts at a distance.

In order to provide a uniform solution to the problem of loans indexed in Swiss francs, the Law on the Conversion of Housing Loans Indexed in Swiss Francs was adopted and entered into force in May 2019. The law applies exclusively to natural persons who have concluded contracts with the bank on housing loans indexed in Swiss francs (CHF), while those who have already converted their debt into euros,

according to one of the earlier models, are not covered by this law. The main intention of the legislator was to try to solve the problem with the loans in question in a clear and simple way, both in the interest of natural persons and in the interest of the financial and judicial system. What still remains a problem in practice is the application of the relevant law by the acting courts, as well as the coverage of categories of clients. The number of disputes has been significantly reduced, but even with the adoption of this law, it has not been completely resolved.

In order for the rights and obligations of users and providers of financial services to be regulated in a clear and comprehensive manner, the National Bank of Serbia (hereinafter: NBS) has adopted a set of decisions regulating the area of the protection of users of financial services. The decision on closer conditions for advertising financial services, adopted in 2019, clearly stipulates that financial services must be advertised in a way that is clear and understandable to the average person, thereby providing additional protection, primarily to natural persons as users of financial services. With the latest changes from 2021, clients are enabled to know precisely the way and procedure to protect their rights in relation to financial service providers if they believe that they have been violated.

To enable natural persons to have an account necessary for daily life activities, in August 2022, the Decision on the salary account with basic services was adopted. Based on this decision, all citizens are enabled to receive a set of essential financial services necessary for everyone in modern society at an appropriate cost. The aforementioned decisions, along with others made by the National Bank of Serbia, round off the entire system that regulates the relations between users of financial services and their providers, which is very important because legal certainty brings legal confidence.

On the other hand, the method of protecting the rights and interests of the insured, policyholder, insurance beneficiary, and third-party injured parties is regulated by the Decision on the method of protection of the rights and interests of insurance users, which has been in force since November 2015. Additionally, the protection of users of insurance services is regulated by the Insurance Law of 2014.

To conclude this introductory part, we would also like to point out that the National Bank of Serbia has been accepted as a full member of the International Organiza-

tion for the Protection of Users of Financial Services (Fin-CoNet). This membership enables the exchange of information, experiences, and regulatory and supervisory practices with foreign organizations in the field of the protection of users of financial services and can represent a significant contribution to the protection of domestic users.

POSITIVE DEVELOPMENTS

In terms of recommendations from last year, improvements have been made to the following extent:

- Further education of users of financial services about their rights, as well as users of insurance services

Regarding this recommendation, it's worth noting that there has been some progress, as indicated by the increased number of justified complaints. However, it is undeniable that there is still a considerable number of unfounded complaints from users of financial services. What is indisputable is that the National Bank of Serbia places a strong emphasis on ensuring a fair relationship and the protection of users of financial services.

Specifically, in the area of educating users of financial services, the National Bank of Serbia has dedicated a special section of its website to inform users. In addition to offering quick and easy access to relevant regulations, the NBS has provided answers to some of the most common and important questions users encounter in practice. It's worth noting that this section of the National Bank of Serbia's website is highly user-friendly, as the relevant texts and articles are not written in complicated bureaucratic language that can be a barrier for the average user. Furthermore, the text is often accompanied by helpful video clips.

However, the National Bank of Serbia's 2022 report reveals that users are still not fully aware of their legal rights and obligations. In 2022, out of a total of 1061 complaints about the performance of banks, only 376 were found to be valid. A similar pattern exists with complaints about the operations of insurance companies during the same period, with 218 of the complaints found to be valid out of a total of 828 complaints. While these data undoubtedly reflect progress compared to the situation in 2019 when the percentage of valid complaints was less than 15%, it's clear that there is still a long way to go before users are adequately informed about the scope of their rights and obligations.

Therefore, we believe that the conditions for user education are in place, and users themselves can learn about their rights and obligations in a clear and straightforward manner if they wish. Additional promotion and outreach to users through a public information service may be necessary.

- Permanent solution for disputes regarding loan processing fees in the manner described above –

Some progress has been observed in the resolution of loan processing disputes. Specifically, there has been a significant decrease in the number of new lawsuits filed. Certain courts correctly interpret the legal position of the Supreme Court of Cassation regarding the permissibility of contracting loan processing costs. However, on the other hand, some courts introduce legal uncertainty in this area by taking a more liberal interpretation of the Supreme Court of Cassation's position.

Overall, judicial practices still vary in this matter and depend on the specific court where the claim is filed. This variability continues to pose legal and financial risks for both clients and financial service providers.

- Facilitating the electronic issuance of bills of exchange for natural persons

We believe that there has been some progress. However, this progress does not imply actual implementation of the recommendation in question. Instead, it reflects the clear stance of the National Bank of Serbia that, in the future, the Central Register of e-bills will also be extended to natural persons who do not engage in business activities.

- Promoting mediation as a way of resolving disputes between banks and users of financial services.

Regarding this recommendation, we wish to emphasize the significant contribution of the National Bank of Serbia to the peaceful resolution of disputes between clients and banks. Through the National Bank of Serbia's website, clients can easily and simply find information on how to initiate the mediation procedure, which is voluntary and free of charge and can be also submitted electronically.

Finally, it's worth emphasizing that in early September 2023, the National Bank of Serbia issued a Decision on temporary measures for banks, specifically related to housing

loans for natural persons in amounts up to €200,000. The primary aim of this Decision is to curb the sudden surge in interest rates. In line with this, the National Bank of Serbia has capped the nominal interest rate for housing loans. This Decision not only reduced interest rates on previously approved loans but also established limits on interest rates for housing loans approved after its enactment. The significance of such action, particularly during a period of rising interest rates, cannot be overstated. It has led to a reduction in loan installments for individual users, typically ranging from 10% to 25%, and in some cases, the reduction may be even higher. However, it's important to note that since the Decision has a limited timeframe, and its measures are temporary, the full impact on long-term housing loans and the situation of users of financial services burdened with high-interest rates can only be assessed at a later date.

REMAINING ISSUES

1. Further education of users of financial services about their rights, as well as users of insurance services

As previously mentioned, we have observed some improvement in this aspect. Our recommendation is that, primarily, natural persons as users of financial services should be educated about their rights and obligations through various information channels within the public media service. While we acknowledge that everyone has the opportunity to learn about their rights and obligations in the area of financial services, particularly through the National Bank of Serbia's website, educating clients through a variety of broadcast formats would significantly enhance the development of financial awareness among citizens.

2. Education of holders of judicial functions in the banking business and in the field of insurance

We believe that the lack of understanding of the banking, insurance, and leasing industries by those in judicial roles is one of the major issues affecting the stability of the financial system. The justifications of numerous court rulings regarding loan processing fees indicate that individuals in judicial positions often lack the necessary knowledge to make informed legal decisions within the banking sector. Similarly, the inconsistent jurisprudence, particularly in cases involving insurance for accidents, points to a similar issue in the insurance sector. In this regard, we believe that ongoing training for individuals in judicial roles is essential, with the goal of enhancing their understanding and famil-

ilarity with regulations in the banking and financial sectors. While we may not propose a specific training method, we are confident that the High Council of the Judiciary, the Supreme Court, the National Bank of Serbia, and other relevant bodies working in collaboration with the financial sector can make a significant contribution to improving the performance of individuals in judicial roles concerning financial services.

3. Enabling the electronic issuance of promissory notes for natural persons

The National Bank of Serbia has announced that it is in the final phase of developing an IT solution for implementing electronic promissory notes for legal entities and entrepreneurs. The Central Register of e-bills is expected to become operational shortly, catering to legal entities and entrepreneurs.

Given technological advancements and the widespread use of promissory notes as a means of securing credit contracts, it's in the interest of natural persons who use financial services to also have the capability to issue e-promissory notes. Positive regulations have made it possible to conclude loan agreements using both two-factor authentication and a qualified electronic signature, which is a significant benefit. However, the current requirement for the loan beneficiary to physically visit a bank branch to issue a promissory note as a means of securing the loan somewhat diminishes the convenience and advantages of this solution.

Our proposal for this year aims to strike a compromise that benefits all participants in the financial services market. It is unquestionable that the Central Registrar of e-bills is closely linked to the forced collection of such bills without the need to initiate judicial enforcement proceedings. We understand that allowing this for natural persons at this moment could expose them to additional risks if a promissory note issued by a natural person could be enforced without judicial scrutiny.

Therefore, our proposal is to allow natural persons to issue an e-promissory note through the Central Register of e-promissory notes, but with a crucial restriction. The note would only be activatable by the creditor after submitting an execution proposal to the competent court and delivering a certificate issued by the Central Register of e-promissory notes confirming its issuance and registration.

Regulating e-bills for natural persons in this manner would make financial services more accessible, while also safeguarding the position of natural persons as users of these services.

4. Permanent solution for disputes regarding loan processing fees and amendments to Article 368, paragraph 1 of the Law on Civil Procedure

As we stated, the situation regarding loan processing disputes is significantly better than it was during 2021 and at the beginning of 2022. However, it has not yet been resolved and significantly burdens the country's financial and judicial system. Additionally, a significant increase in enforcement procedures based on first-instance judgments in connection with loan processing fees is noticeable. In accordance with Article 368 of the Civil Procedure Act, which stipulates that an appeal against a first-instance judgment ordering a legal entity to pay claims whose principal does not exceed the amount of EUR 1,000.00 in dinar equivalent at the middle exchange rate of the National Bank of Serbia on the day the decision was made, does not delay execution. Namely, by submitting a proposal for execution based on a non-legally binding judgment, lawyers expose their clients to a significant risk if, by decision of the court, the judgment is changed. In such a situation, if the client's claim against the bank was collected on the basis of a first-instance judgment, which was changed or abolished, the bank has the right to claim from the client the entire collected claim increased by the costs of the enforcement procedure, as well as the costs that the bank will incur in the counter-execution procedure.

The aforementioned puts clients, especially natural persons, in an unfavorable financial position due to the irresponsible actions of their lawyers. It is often the case that the clients were not even informed by the lawyers of the fact that such a possibility exists. In order to completely relieve the financial system of disputes regarding loan processing fees, it is first of all necessary to consider the adoption of an additional legal position by the Supreme Court of Cassation or the adoption of a special law that would regulate this area. In addition, regardless of the final decision, what is more than urgent is the amendment of Article 368 of the Law on Civil Procedure and the abolition of the possibility of enforcement based on an invalid judgment. Namely, this provision, due to the combination of circumstances, is now a new significant danger for financial stability because the banks' claims

against clients, and after the modification of the first-instance decisions, are increasing every day.

5. Amendments to the Law on Conversion in terms of specifying norms that would clearly define the currency clause as well as the rights of clients and banks, all with the aim of relieving the judicial authorities

Since the Law on the Conversion of Home Loans Indexed in Swiss Francs did not cover all categories of loan users indexed in Swiss Francs, disputes against banks persist, particularly among users who repaid their obligations before the law came into effect or chose not to accept the conversion. However, the extent of these disputes is significantly reduced. Therefore, it is necessary to amend the Law on the Conversion of Housing Loans Indexed in Swiss Francs to address all uncertainties that are the subject of court disputes.

6. Increasing the limit from Article 3, Paragraph 3 of the Law on the Protection of Users of Financial Services in Distance Contracting

The Law on the Protection of Users of Financial Services in Distance Contracting provides for the possibility of concluding distance contracts, in which a written form with the use of a qualified electronic signature is mandatory. However, the legislator recognized that a significant number, especially natural persons, do not possess a certificate for a qualified electronic signature. It is stipulated that the user can enter into a long-distance contract "worth up to 600,000 dinars without using a qualified electronic signature, provided that the user consents to the contract's conclusion by employing at least two elements to confirm the user's identity (authentication) or by using electronic identification schemes of a high level of reliability.

In practice, over the past few years of law enforcement, financial service providers, particularly banks, have increasingly enabled the conclusion of contracts at a distance, especially for loans, using a two-factor authentication procedure. As we mentioned, the primary reason is that a large number of citizens do not possess a qualified electronic signature. While we believe that a qualified electronic signature is something every citizen of Serbia should have, at this moment, we think that the digitization of financial services, on the one hand, and the fact that a significant percentage of natural persons do not have a qualified electronic signature, necessitate an increase in

the specified limit. Regarding the amount itself, we leave it to the regulator to assess, but in any case, we believe that the risk would not significantly increase if the limit were raised to 1,200,000 dinars.

7. Issuance of a legal opinion by the Supreme Court of Cassation regarding the proof of contracts concluded at a distance

Considering the experience gained from numerous disputes that have burdened both the financial system and the country's judicial system in recent years, we believe that special attention should be given to a particular issue, which has the potential to become a future problem if not addressed promptly. The widespread practice of concluding contracts at a distance using two elements to confirm the user's identity (authentication) leads us to a situation where, at some point, there will be a need to prove that the contract was indeed executed. As simple and convenient as the process of contract conclusion may be, we consider the procedure for proving that the contract has been concluded to be rather complex. Consequently, it is necessary for either the Supreme Court of Cassation to issue a legal opinion on the requirements for financial service providers to provide as evidence that the contract was concluded when initiating a judicial collection procedure, or for the regulator to issue an authoritative interpretation that offers a detailed clarification on this matter. This step is crucial for ensuring complete legal certainty and clarity.

8. Continuous exchange of opinions and constructive discussions with insurance companies regarding the implementation of the rules on insurance distribution, i.e. regulatory requirements regarding market behavior

In the insurance sector, we would like to highlight the following issues encountered in the previous year: an increase in the number of reported claims and objections filed by lawyers, primarily based on material and immaterial damages from liability insurance due to motor vehicle usage, has been observed. This has led to an increase in the costs incurred by insurers, particularly in terms of settling attorney's fees. Additionally, some lawyers handling compensation claims and objections lack professional knowledge in the insurance field. In certain cases, they submit objections to both insurance companies and the National Bank of Serbia (NBS), even when it's evident that their claims are unfounded. There have been instances where they refuse

to submit the special power of attorney, as mandated by the Decision on the Procedure for Complaints by Users of Insurance Services from 2021. This often results in dissatisfied individuals contacting the NBS.

Insurers frequently face premature objections, particularly concerning the amount of future compensation from insurance, while the processing of compensation requests is still ongoing, and no initial decision has been reached. Furthermore, there is a growing trend of lawyers, when representing insurance service users, submitting incomplete compensation requests. Subsequently, when the insurance company requests additional information, as it is unable to make a decision based on the available documentation, these individuals initiate court cases. Although these disputes are typically resolved quickly once the requested information is provided, they contribute to an increase in the number of court cases and overall costs for both insurance companies and policyholders. This situation erodes trust in the insurance industry and is primarily driven by individuals seeking quick and easy profits.

The insufficient knowledge of insurance matters, both by lawyers and judges, coupled with lengthy legal procedures, leads to extended waiting times for verdicts. These verdicts may not align with the evolving trends in the insurance market and the views of the NBS.

Regarding regulations governing market behavior in the insurance sector, as substantial improvements are planned for the existing regulations in this field, continuous and constructive communication between the industry and the NBS before implementing and prescribing new obligations would be beneficial. This approach can help in properly assessing the level of market development and the current level of user protection achieved through existing regulations and rules that impact various aspects of insurance companies' operations, from supervision and product management to product placement and distribution.

9. Implementation of the Open Banking model, that is, banking identity

Bank authentication represents the highest level of client

verification. Once a client undergoes the identification process with one bank, there is no need to repeat the same procedure with other banks.

Currently, banks are obligated to facilitate the transfer of a payment account in the same currency and provide all the necessary information when a client opens an account in a new bank, based on authorization. This existing mechanism can be extended so that when a client already has an account with one bank and wishes to open an account with another, the new bank can automatically access all the required client identification data from the bank where the client already holds an account. A similar mechanism is already in use by eAdministration in collaboration with specific banks in the domestic market for issuing credentials.

The introduction of the Open Banking model in this manner would foster increased competition within the banking industry, with a primary focus on delivering high-quality services to the citizens of Serbia. This aligns with the vision of the regulator and the Law on Payment Services.

Enhancing the user identification process builds upon the existing framework of the Law on Payment Services, particularly by leveraging the potential for implementing and expanding the Change of Payment Account model (as outlined in Article 73 of the Law on Payment Services). This doesn't require changes to regulations but instead calls for a consistent interpretation and application of the Law on Payment Services through the establishment of a unified mechanism for data exchange between banks, under the oversight of the National Bank of Serbia.

Additionally, another tool to boost competition among banks could be the establishment of a centralized database on earnings, hosted by the National Bank of Serbia. Instead of clients obtaining and submitting their employers' certificates to the bank, banks would have the option to automatically retrieve the necessary data from this centralized database.

In this manner, we are progressing toward true open banking and further digitization while upholding the principles of safety and security.

FIC RECOMMENDATIONS

- Further education of users of financial services and insurance services about their rights and obligations, as well as users of insurance services.
- Education of holders of judicial functions in the banking business and in the field of insurance, and in this sense, the introduction of specialized subjects from these areas at the Judicial Academy.
- Facilitating the electronic issuance of promissory notes for natural persons.
- Permanent solution for disputes regarding loan processing fees in the manner described above and amendment of Article 368, paragraph 1 of the Law on Civil Procedure.
- Amendments to the Law on Conversion in terms of specifying the norms that would clearly define the currency clause as well as the rights of clients and banks, all with the aim of relieving the judicial authorities
- Increasing the limit from Article 3, Paragraph 3 of the Law on the Protection of Users of Financial Services in Distance Contracting
- Issuance of a legal opinion by the Supreme Court of Cassation regarding the proof of contracts concluded at a distance
- Continuous exchange of opinions and constructive discussions with insurance companies regarding the implementation of rules on insurance distribution, ie regulatory requirements regarding market behavior.
- Implementation of the open banking model, that is, the introduction of a banking identity
- Promoting mediation as a way of resolving disputes between banks/insurance companies, both among themselves and with users of financial services, would be important, and in this sense, amendments to the Law on Mediation.