

CONSUMER PROTECTION

1.67

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Improving and strengthening the system of out-of-court settlement of consumer disputes.	2022			√
Promoting the protection of consumer rights and interests at the local level.	2013		√	
Ongoing work on consumer education and implementation of topics in the field of consumer protection in primary and secondary education curricula;	2014		√	

CURRENT SITUATION

In 2023 and 2024, the Government of the Republic of Serbia has undertaken activities aimed at adopting a new Law on consumer protection, which will replace the Law from 2021. The new Law will take over a number of provisions from three EU Directives adopted in 2019: Directive 2019/770/EU on Certain Aspects Concerning Contracts for the Supply of Digital Content and Digital Services; Directive 2019/771/EU on Certain Aspects Concerning Contracts for the Sale of Goods; and the so-called ‘Omnibus’ Directive (EU) 2019/2161 in Better Enforcement and Modernisation of Union Consumer Protection Rules.

Like the 2021 Law, the draft of the new Law invokes Article 78 of the Stabilisation and Association Agreement which stipulates that the Contracting Parties shall encourage and ensure a policy of active consumer protection in accordance with Community law and the harmonisation of consumer protection legislation in Serbia with the protection in force in the Community of the European Union.

The 2021 Law significantly improved the mechanism of out-of-court settlement of consumer disputes, by introducing the obligation and regulating the procedure before bodies for out-of-court settlement of consumer disputes. Proceedings before the body may be initiated by the consumer if he has previously made a complaint or objection to the trader, and the trader is obliged to participate in the procedure. The penalty for those who refuse to participate in mediation or do not publish a notice that the buyer has the right to an out-of-court settlement of the dispute is 50,000 dinars (which is approximately 425 euros). Although this method of dispute resolution existed in the period before 2021, traders in practice avoided participating in the agreement, but only rejected complaints about goods and referred dissatisfied customers to court, and consumers often gave up on the court proceedings.

The Law also introduced the so-called “Do not call” register of telephone numbers of consumers who do not want to be called by traders who offer goods/services by phone, which is kept by the regulatory body in charge of electronic communications, which should prevent or reduce intrusive business practices that exist through multiple telephone addresses to consumers. In this regard, on December 28, 2023, the Ministry of the Interior and Foreign Policy adopted the Rulebook on the Registry of Consumers Who Do Not Want to Receive Connected Devices and/or Messages as Sold by Phone, and starting from January 5, 2024, consumers have been allowed to register in the so-called “Do Not Call” Register. From the establishment of the full functionality of the so-called “Do Not Call” Register until July 2024, a total of 16879 consumers were registered in the “Do Not Call” Register.

The 2021 Law also improved and more precisely defined the complaint procedure (after two years from the purchase, the complaint is declared to the guarantor, and the obligation of the trader to receive the complaint has also been established, which solves the current problems from practice related to the refusal of the receipt of the complaint by the trader), the obligation to make a calculation and specification of the sale price of the service (for a value of more than 5,000 dinars, which is approximately 42 euros), and the content of the invoice issued for services of general economic interest. In addition, the Law specified that the prohibition of unfair business practices covers all phases of legal transactions, which opened up space for a more comprehensive implementation of inspection supervision.

The 2021 Law introduced the possibility of issuing misdemeanor orders to the trader. The Law prescribes a fixed fine of 50,000 dinars for a legal entity and 30,000 dinars (approximately 255 euros) for an entrepreneur for certain violations. Longer limitation periods are also prescribed, so misdemeanour proceedings cannot be initiated or con-

ducted if two years have elapsed from the date on which the offense was committed (previously, the one-year statute of limitations established by the Law on Misdemeanours was applied).

The Draft Law brings a number of important novelties, mainly related to the supply of digital content or digital services, or to the provision of the so-called online marketplace. The definition of “goods” has now been amended to include a bodily item that incorporates or is associated with a digital content or service in such a way that the goods would not be able to function without that digital content or service. The new Law will regulate in detail the subjective and objective requirements that must be met in order for goods to be considered conforming to a contract. Subjective requirements are satisfied when the goods are in conformity with what the trader and the consumer have agreed, and objective requirements are satisfied when the goods are suitable for the purposes for which goods of the same type would normally be used. Other important novelties from the Draft Law are presented in the second part of this text, in the sections “Positive Developments” and “Remaining issues”.

POSITIVE DEVELOPMENTS

Among the improvements in the content and implementation of regulations in the field of consumer protection, improvements due to legal changes adopted in 2021 and improvements contained in the Draft of the new Law can be distinguished.

The 2021 legal improvement of the out-of-court dispute resolution mechanism seems to have encouraged consumers to try to exercise their rights more often than in the previous period. According to information from the Ministry of Internal and Foreign Trade, in 2023, consumers submitted 2,270 proposals for conducting proceedings before bodies for out-of-court dispute resolution. The number of intermediaries registered on the List of Bodies for Out-of-Court Settlement of Consumer Disputes, at the Ministry of Internal and Foreign Trade, increased from 25 to more than 60 from 2021 to mid-2024.

One of the important novelties from the Law of 2021 is the introduction of the “Do Not Call” register, as a database of consumers who have declared that they do not want to receive calls or messages over the phone for promotional purposes as part of the promotion or sale of certain goods

or services. The “Do Not Call” register began operating on January 5, 2024. Verification of telephone numbers entered in the Register is enabled on the website of the Regulatory Authority for Electronic Communications and Postal Services (RATEL). A consumer who does not want to be invited by traders, i.e. agencies that do promotion or research, can contact his electronic communications operator with whom he has concluded a contract and ask him to be included in the Register. It is the obligation of traders, i.e. promoters, to check in the Registry before calling consumers whether a certain phone number is on the list of phones that should not be called. In addition, consumers are enabled to register in the “Do Not Call” Register electronically, using electronic solutions provided by operators of electronic communication services, which significantly facilitates the procedure of registration in the “Do Not Call” Register.

It is also noticeable the engagement of consumer protection associations through educating consumers about their rights, organizing round tables where important topics in this area were discussed, testing consumer products and informing consumers about observed irregularities, etc.

Improvements after the adoption of the Law in 2021 are also visible at the level of local self-government units and competent state institutions (including primarily ministries, inspections and courts), where various forms of education on consumer protection have been organized, such as trainings for employees, conferences and round tables, all with the aim of raising the level of their expertise and implementing EU standards. as well as the Government’s efforts to improve the development of e-commerce.

The draft law introduces a number of changes that strengthen the position of consumers and the protection of their rights. The proposal introduces new forms of commercial practice which, regardless of the circumstances of the individual case, are considered misleading. Such forms of commercial practice include, but are not limited to: displaying search results in response to a consumer’s online search without clearly indicating paid advertising or special payment for the purpose of achieving higher product rankings in those results; Fake reviews, due to the trader’s failure to take reasonable and proportionate measures to verify that the reviews originate from consumers who have actually used or purchased their products; and the resale of tickets acquired by the trader using automated means to circumvent the rules relating to the purchase of tickets.

When selling goods with digital elements, according to the Draft Law the trader is obliged to inform the consumer about the updates and provide updates that the consumer himself then installs. The Draft also provides better protection for consumers who use social media. Namely, the proposal extends the application of the legal provisions on sales contracts to contracts for the supply of digital content or digital services, where the consumer supplies or undertakes to provide personal data to the trader. In this way, the Draft treats personal data as a form of compensation.

The draft law brings a significant improvement from the perspective of traders, through the provision according to which the notification to the consumer before concluding a distance contract must contain only a minimum of information if the means of distance communication has a limited space or time of display. The minimum information shall include the following: the basic characteristics of the goods or services; the identity of the trader; the total price; the duration of the contract; the existence of a right of withdrawal; and, if the contract is for an indefinite period of time, the conditions for termination of the contract.

REMAINING ISSUES

It is difficult to assess the effectiveness of out-of-court settlement of consumer disputes, due to the lack of transparency of the work of bodies for out-of-court settlement of consumer disputes. The Law obliges these bodies to publicly publish on their websites reports with statistics on procedures and with an overview of significant problems observed, but such a legal obligation exists only if the bodies have a website. In practice, out-of-court dispute resolution bodies do not have websites, so there is a lack of information about the work of such bodies. Contrary to the solutions from the Law, under Directive 2013/11/EU on alternative dispute resolution for consumer disputes, from which the Law partially took over the provisions on out-of-court dispute resolution, bodies are obliged to make their reports publicly available. In addition, it should be pointed out that in practice it has turned out that intermediaries do not have sufficient knowledge and expertise for out-of-court settlement of consumer disputes, especially disputes that have services of general economic interest as their subject, and it is necessary to continuously organize trainings for intermediaries with the aim of acquiring additional knowledge and skills for the legitimate resolution of out-of-court consumer disputes.

The 2021 Law does not provide the possibility of court proceedings for the collective exercise of consumer rights. Instead, citizens have the option of collective resolution of consumer disputes in administrative proceedings before the Ministry of Trade. The Law did not transpose the provisions of Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers. Consumer protection associations believe that the current legal framework prevents consumers from effectively exercising their rights. Compensation for damages is not among the measures that the Ministry may impose in order to protect the collective interest of consumers. In addition, the Ministry, unlike the court, is not subject to the constitutional obligation of independence and impartiality when deciding on the rights and obligations of persons. The Draft Law does not bring any changes to the existing regime of collective management of consumer rights.

The Draft Law did not adopt a provision from the “Omnibus” Directive (2018/2161), which prohibits the non-transparent placing of dual quality goods on the market. According to the provision in question, the marketing of goods in one Member State while presenting the goods as identical to those marketed in other Member States, even though those goods differ significantly in composition or characteristics, constitutes a misleading commercial practice. The Government did not include this or a similar provision in the Draft on the grounds that it is non-transferable. However, it would be possible to transpose the provision without referring to the “other members” of the European Union.

The provisions of the Draft Law on the elimination of lack of conformity, in particular on the trader’s obligations after the expiry of the period within which the consumer has the right to choose between the replacement of goods, price reduction and termination of the contract, should be made clearer, in order to avoid problems in practice that traders faced during the period of application of previous consumer protection laws.

Finally, the provisions of the draft law contain certain solutions that are regulated in a different way in other laws that also have as their subject the rights and obligations of consumers, and it is necessary to harmonize different legal solutions, in order to avoid in practice the possibility of a different and inconsistent interpretation of the rights and obligations of consumers, as well as the rights and obligations of traders, which would fully ensure consumer pro-

tection (for example, A general ban on direct advertising without a clear provision for the fulfilment of the rights and obligations of the trader provided for by a special law as an exception). In addition, the Draft Law retains certain provisions of the current Law, for example, on the obli-

gation of the trader to include free services in the invoice specification, which are contradictory to the sectoral regulations, and increase the costs of the trader regardless of the absence of a clear interest of the consumer that is protected by these provisions.

FIC RECOMMENDATIONS

- Prescribing a legal obligation for out-of-court dispute resolution bodies to establish, for the purpose of transparency, websites on which they will publish periodic reports.
- Legal introduction of court proceedings for the collective exercise of consumer rights, with the power of the court to order compensation for material and non-material damage caused by the violation of consumer protection regulations.
- Adoption of a legal provision prohibiting non-transparent placing of dual quality goods on the market.
- Harmonization of legal provisions with the provisions of other laws regulating the issue of rights and obligations of consumers.