PROTECTION OF USERS OF FINANCIAL SERVICES

2.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Further education of users of financial services and insurance services about their rights and obligations, as well as users of insurance services.	2014	√		
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.	2020			√
Facilitating the electronic issuance of promissory notes for natural persons.	2019		√	
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.	2021		√	
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	2021		√	
Increasing the limit from Article 3, Paragraph 3 of the Law on the Protection of Users of Financial Services in Distance Contracting	2021	√		
Issuance of a legal opinion by the Supreme Court of Cassation regarding the proof of contracts concluded at a distance	2023			√
Continuous exchange of opinions and constructive discussions with insurance companies regarding the implementation of rules on insurance distribution, ie regulatory requirements regarding market behavior.	2021			√
Implementation of the open banking model, that is, the introduction of a banking identity	2023	√		
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.	2022		√	

CURRENT SITUATION

Bearing in mind that at the time of drafting the White Book, the adoption of the new Law on the Protection of Financial Services Customers is underway, and in this part, in addition to the analysis of the existing legal provisions, we will also consider the novelties brought by the new text of the law. The rights of users of financial services provided by banks, financial leasing providers and traders, as well as the conditions and manner of exercising and protecting such rights, are currently regulated by the Law on the Protection of Financial Services Users of 2011 (hereinafter: ZZKFU), as last amended in 2014. What is indisputable is that the ZZKFU has introduced legal security and certainty in the relations between users of financial services and their providers. Namely, the rights and obligations are much clearer and more precisely regulated than was the case before the adoption of the designated law. In addition to the aforementioned Law, due to the increasing importance of the process of overall digitalization, the Law on the Protection of Financial Service Users in distance contracting was adopted, which began to be applied in September 2018. By adopting this law, the regulator has recognized the importance of the development of digitalization in the process of concluding contracts, i.e. clear regulation of rights and obligations when concluding distance contracts.

In the part of this area that concerns loans indexed in Swiss francs, there was no additional intervention of the legislator, after the adoption of the Law on the Conversion of Housing Loans Indexed in Swiss Francs, which 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 previous models, are not covered by this law. The main intention of the legislator was to try to solve the problems 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. In practice, this type of dispute still exists, and what is necessary is a clear application of the law in question by the courts. The number of disputes has been significantly reduced, but even with the adoption of this law, it has not been fully resolved.

In order to regulate in detail and comprehensively the rights and obligations of users and providers of financial services, the National Bank of Serbia (hereinafter: NBS) has adopted a set of decisions regulating the protection of users of financial services. Since the adoption of the Law on the Protection of Financial Services Users, the NBS has continuously worked to improve this area, as well as the protection of financial service users, as well as a clear definition of the rights and responsibilities of financial service providers. In addition to the decisions that we have mentioned in previous texts and which have not changed in the past period (Decision on the Payment Account with Basic Services adopted in 2022, Decision on Detailed Conditions for Advertising Financial Services adopted in 2019, Decision on the Conditions and Method of Calculation of the Effective Interest Rate with the 2018 version, etc.) we would like to take this opportunity to point out to two decisions that were made by the NBS between the writing of this and the previous text. Amendments to the Decision on the Procedure for Objections and Complaints of Financial Service Users with the last changes that entered into force in September 2023, additionally clarified the concepts of financial service users, complaints, the way of submitting them, specified the NBS's handling of complaints, etc. Without diminishing the importance of the previous decision, we would like to emphasize the importance of the Decision on Temporary Measures for Banks Related to Housing Loans to Individuals, which was adopted in September 2023. By this decision, the NBS limited the interest rate to 4.08% for a period of 15 months for debtors who are beneficiaries of the first housing loan with a variable interest rate, and whose contracted amount does not exceed EUR 200,000, as well as the importance of the ZZKFU novelties, which foresees interest rate restrictions, and which above all relate only to natural persons as users of financial services, namely the way that the interest rate in the Loan Agreement will depend on the Weighted Interest Rate published by the NBS.

The aim of the aforementioned decision and novelty was primarily to preserve financial stability and protect certain categories of financial services users from the effect of a significant change in the variable part of the interest rate (EURIBOR). These and other decisions made by the National Bank of Serbia complete the entire system that regulates the relations between users of financial services and the their providers, which is very important because legal certainty brings legal certainty.

On the other hand, the manner of protection of the rights and interests of the insured, the policyholder, the beneficiary of the insurance and third parties is regulated by the Decision on the Manner of Protection of the Rights and Interests of the Beneficiary of Insurance Services, which has been in force since November 2015. In the previous period, there was no activity of the NBS in the part of additional regulation and protection of the rights of users of insurance services. In addition, the protection of insurance customers is regulated by the Insurance Law from 2014.

What needs to be emphasized is that this area has changed a lot and further developed, which has been recognized by the European Union with the adoption of Directive (EU) 2023/2225 on consumer credit products from 18 October 2023, which the Member States should implement in national regulations until November 20, 2026, and apply from November 20, 2026. Bearing in mind the close connection of domestic regulations in this area with the regulations of the European Union, the National Bank of Serbia has prepared a draft of a new Law on the Protection of Financial Services Users.

The draft of the new Law on the Protection of Financial Services Users further regulates this area, provides a significant set of benefits for the position of financial services users, and creates additional conditions for the average user to be aware of the economic consequences of their decisions on the use of financial services. In order to protect natural persons as users of financial services from a sudden increase in the value of interest rates, a limit on the amount of interest rates for various types of banking products has been introduced. In addition, emphasis is placed on the pre-contractual phase so that users can be clearly and simply informed in advance about the fact that borrowing costs money, as well as on the assessment of the creditworthiness of clients

in order to prevent excessive borrowing. Also, in accordance with the needs of the market, an additional step has been taken to encourage the digitalization of financial services, and the limits for concluding distance contracts have been increased from 600,000 dinars to 1,200,000 dinars for loans and 2,400,000 dinars for deposits.

POSITIVE DEVELOPMENTS

With regard to last year's recommendations, there have been improvements to the following extent:

Further education of users of financial services and insurance services about their rights and obligations – Regarding this recommendation, we can say that in the previous period there was no significant difference in the number of complaints from users of financial services, both in the number and in the merits of the same. A certain trend has been maintained that 1/3 of the complaints are well-founded. Bearing in mind that in recent years, the NBS has invested great efforts in educating users of financial services through a special section on its website, through answers to questions, etc. Also, in the previous period, representatives of the NBS participated in various conferences and events dedicated to topics in this area, and the engagement of the NBS in this area can be assessed as very active. In addition, it is indisputable that through various forms of regulation and engagement of the NBS, the primary goal is fair treatment and protection of users of financial services. We also believe that the proposed draft Law on the Protection of Financial Services Users further emphasizes the need for education of financial services users. In accordance with the above, we believe that this recommendation does not need to be emphasized, since we can conclude that it has been fulfilled, with the suggestion to continue in the same direction with the education of financial service users.

Education of judicial authorities in the area of banking operations and in the field of insurance, and in that sense the introduction of specialized cases in these areas at the Judicial Academy – In this part we have not really seen any certain progress, and in that sense it is necessary to work further on the fulfillment of this recommendation. Namely, the regulatory framework is only one pillar of legal certainty, and the implementation of the same is yet another important element. The inconsistency of judicial practice in loan processing disputes, as well as the rationales of the decisions themselves, indicate that additional understanding of this area is necessary by public office holders.

Enabling electronic issuance of bills of exchange for natural persons – the progress depends on the establishment of the Central Register of E-Bills of Exchange for legal entities and entrepreneurs, which project is still in the testing phase. Accordingly, there has been no progress in this field, but the reasons for stagnation are objective.

Permanent Resolution for Disputes Regarding Loan Processing Fees and Amendments to Article 368, Paragraph 1 of the Civil Procedure Law – Some progress has also been observed in the part of loan processing disputes compared to the previous year. Namely, the number of new lawsuits has been further reduced. Certain courts correctly interpret the Legal Position of the Supreme Court on the permissibility of contracting the costs of loan processing. On the other hand, some of the courts, by freely interpreting the position of the Supreme Court, introduce legal uncertainty in this area. Overall, judicial practice still differs in this matter and depends on which court the lawsuit is filed with, which still carries with it both legal and financial risks for clients and financial service providers. In accordance with the above, we remain of the opinion that it is necessary to continue working on the final solution of this problem and the possible prevention of new mass litigations in the future.

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 burden on the judicial authorities – as we have stated, the number of these disputes is decreasing and we can say that at this moment there is no need to do anything additional in relation to this recommendation.

Increase of the limit referred to in Article 3, paragraph 3 of the Law on the Protection of Financial Services Users in Distance Contracting – The new amendments to the Law stipulate that the User may sign a distance contract in the amount of up to RSD 1,200,000 for loans and up to RSD 2,400,000 for deposits, by verifying and confirming his user identity by the service provider, using at least two elements to confirm the user's identity (authentication) or the use of electronic identification schemes with a high level of confidence, in accordance with law and other regulations. In view of the new provisions, we believe that in this way the recommendation from the previous text of the White Book has been met.

Issuance of a legal position by the Supreme Court of Cassation regarding the proof of contracts concluded at a distance – There has been no progress in this part, and we

believe that in the near future it would be necessary to issue the legal position in question, bearing in mind the increasing number of contracts concluded at a distance.

Continuous exchange of views and constructive discussions with insurance companies regarding the implementation of rules on insurance distribution, i.e. regulatory requirements regarding market behaviour - No significant progress has been made in this area.

Implementation of the Open Banking model, i.e. banking identity - in this part, we believe that there has been a significant shift, especially considering the adopted text of the amendments to the Law on Payment Services. We hope that in the future, this concept will be fully implemented in our legal system.

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 that sense, amendments to the Law on Mediation – There has been progress in this part because the NBS is actively working on it. We would like to specially point out to the progress from the point of view of the insurance company, as mediation has been recognized as a way of resolving disputes. Some insurance companies have recognized mediation as an effective way of resolving disputes and initiate the mediation procedure even before initiating court proceedings, while more often in contractual relations, as a way of resolving a dispute, mediation is primarily mentioned, while secondarily the court of appropriate jurisdiction. However, we openly and directly state that the problem lies with other market participants (financial institutions) that have not yet recognized mediation as the most useful tool for potential dispute resolution, and we believe that it is necessary to educate all market participants.

REMAINING ISSUES

1. The education of the holders of judicial functions

As we have stated in previous years, the education of the holders of judicial functions is key to understanding the area. We believe that misunderstanding of banking business and business in the field of insurance and leasing by the holders of judicial functions, is one of the great issues of the stability of the financial system. The explanations of many courts' decisions regarding loan processing fees indicate that judicial office holders do not possess the necessary knowledge to make lawful decisions in the field of banking operations. Also, uneven judicial practice, especially when it comes to accident insurance, indicates the same in the field of insurance. In addition, we emphasize the necessity of education and cooperation in order to have a uniform judicial practice. We believe that the regulatory framework is very clear in this area, harmonized with the practice and law of the European Union, and a clear application of the regulation is necessary, and the key element is the understanding of the financial sector business. In that part, we believe that constant training of the holders of judicial functions is necessary, with the aim of education and familiarization with the regulations from business in the financial sector. We cannot propose a training modality, but we are sure that in that part the High Council of the Judiciary, the Supreme Court, the National Bank of Serbia, as well as other bodies in cooperation with the financial sector can significantly contribute to the improvement of the work of holders of judicial functions when it comes to the matter of financial services.

2. Enabling Electronic Issuance of Bills of Exchange for Individuals

We hope that the implementation of electronic bills of exchange for legal entities and entrepreneurs will be implemented in the near future, as this solution not only enhances legal certainty but also makes the process of issuing an e-bill of exchange more convenient for clients. Following the development of digitalization in our legal system, as well as the importance of the bill of exchange as a means of securing loan agreements, it is expected that the next step after the implementation of electronic bills of exchange for legal entities and entrepreneurs will be the introduction of e-bills of exchange for individuals.

Namely, current regulations have enabled the conclusion of loan agreements using both two-factor authentication and qualified electronic signatures, which is a significant benefit. Additionally, the proposed amendments to the Payment Services Law introduced reliable authentication as an added layer of protection. However, the need for credit users to physically visit a bank branch to issue a bill of exchange as collateral for a loan somewhat negates the benefits users enjoy when concluding loan agreements in electronic form.

Similar to last year, our proposal this year would be a form of compromise in the interest of all participants in the financial services market. Namely, it is indisputable that

the Central Register of e-Bills of Exchange is closely linked to the enforcement of the same without the need to initiate court enforcement proceedings. We are aware that at this moment, allowing such a system for individuals would expose them to additional risk if a bill of exchange issued by an individual could be enforced without judicial verification.

Therefore, our proposal is aimed at enabling individuals to issue an e-bill of exchange through the Central Register of e-Bills of Exchange, but without the possibility of it being activated by the creditor without submitting an enforcement proposal to the competent court. An electronic bill of exchange issued by an individual could only be activated upon the submission of an enforcement proposal to the competent court, along with a certificate issued by the Central Register of e-Bills of Exchange confirming that it has been issued and registered. Regulating e-bills of exchange for individuals in this way would facilitate the use of financial services on one hand, while not jeopardizing the position of individuals as users of those services on the other.

3. Permanent Resolution of Disputes Regarding Loan Processing Fee and Amendments to Article 368, Paragraph 1 of the Law on Civil Procedure

In terms of the loan processing process, the situation has improved significantly, the number of lawsuits has decreased, we also have an increasing number of decisions in line with the legal position of the Supreme Court from September 2021, but problems still exist. As we have previously stated, a major problem, both financially and operationally, is the number of enforceable court proceedings based on non-final judgments, in accordance with Article 368 of the Criminal Code. Named Article prescribes that appeal against the first-instance verdict ordering a legal entity to pay a claim 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 of the decision shall not delay the execution. Namely, by filing a proposal for enforcement based on a non-final judgment, lawyers expose clients to a significant risk if the decision of the court changes by the higher jurisdiction. In such a situation, if the client's claim against the bank is collected on the basis of a first-instance judgment, which has been modified or cancelled, the bank has the right to claim from the client the entire collected claim increased by the costs of enforcement proceedings, as well as the costs that the bank will incur in the counter-enforcement procedure. This puts clients, especially natural persons, in an unfavourable financial position, due to the irresponsible behaviour of their lawyers, and it is often the case that clients were not even informed by the lawyer of the fact that such a possibility exists. In order to fully relieve the financial system of disputes regarding loan processing fees, it is necessary to first consider the adoption of either an additional legal position by the Supreme Court or the adoption of a special law that would regulate this area. In addition, regardless of the final solution, what is more than urgent is the amendment of Article 368 of the Law on Civil Procedure and the abolition of the possibility of carrying out enforcement on the basis of a non-final judgment. Namely, this provision is now a new significant threat to financial stability, because banks' claims against clients, after the reversal of first-instance decisions, are increasing on a daily basis.

4. Issuance of a legal position by the Supreme Court regarding the proof of contracts concluded at a distance

As we have stated, the proposed draft Law on the Protection of Users of Financial Services provides the possibility of concluding Contracts, the value of which is up to 1,200,000 dinars or 2,400,000 dinars. The aforementioned fact additionally indicates that it is necessary to take a legal position as soon as possible on the way in which the validity of those contracts is proven in court proceedings. The user can conclude the contract without using his qualified electronic signature with the use of two elements to confirm the user's identity (authentication). Although the conclusion of a contract at a distance is a significant relief for Users compared to previous legal solutions, the issue of proving the conclusion of a contract in the event of a dispute can create a challenge for service providers, taking into account the rules of the burden of proof which stipulate that the burden of proof is borne by the party who claims that has a right, i.e. that the contract has been concluded. Taking into account the previous experience in disputes of a similar nature, we believe that in order to achieve legal certainty and certainty, it would be necessary for the Supreme Court to issue a legal position explaining what constitutes evidence that a distance contract has been concluded or for the regulator to adopt an authentic interpretation which would clarify the said question in detail.

5. Expansion of the domain of the Housing Loan Agreement and expansion of the concept of residential real estate

Namely, the proposed draft Law on the Protection of Users of Financial Services defines in detail the term Housing

Loan Agreement in such a way that it is stated that it is a loan agreement concluded by the bank with the beneficiary for the purpose of purchasing, building, adapting or reconstructing exclusively residential real estate: houses, an apartment, a part of a residential building that is intended for living, a garage, a garage space together with an apartment and a plot of land with a building permit for the construction of a house. This arrangement of the concept of the Housing Loan Agreement envisages the exclusive purpose of the loan for the listed immovable properties, without taking into account the needs of the user to expand the definition of residential immovable property, given that the need for long-term financing of the purchase of apartments and cottages is increasingly emerging, and therefore we suggest considering the possibility of expanding definitions of residential real estate.

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

In the area of insurance, we would like to point out the following problems that we encountered in the previous year: an increase in the number of both reported claims and objections filed by lawyers based on material and immaterial damages from liability insurance due to the use of a motor vehicle was observed, and thus the costs of processing such demands increase to insurers in the part of settlement of attorney's fees. Also, lawyers who submit compensation claims and objections do not have professional knowledge in the field of insurance, and it happens that they submit objections to insurance companies and the NBS even though it is evident that the requests are unfounded. In particular, it happens that they do not want to submit the special power of attorney prescribed by the Decision on the procedure for the complaint of insurance service users from 2021, and after the request of the insurance company to submit a special power of attorney with all the prescribed elements in order to be able to proceed with the resolution of the complaint, it happens that dissatisfied clients appeals to the NBS.

The insurer is often faced with premature objections, especially regarding the amount of the future insurance compensation, when the processing of the claim for compensation is still ongoing and not even a first-instance decision has been made. Also, an increasing number of lawyers, when representing users of insurance services, submit an incomplete request for compensation/compensation, and then when the insurance company requests a supplement because it is objectively unable to make a decision based on the available documentation, they initiate a court case. These disputes usually end quickly because the litigator provides what the insurance company requested as a supplement. In this way, the number of court cases increases, the costs of both insurance companies and users of insurance services increase, mistrust is created in the insurance industry, and all because of individuals who see it as a quick and easy profit. Also, insufficient knowledge of insurance matters, both on the part of lawyers and judges, and the length of the procedure, lead to a long wait for the verdict, which is not in accordance with the trends in the insurance market and the views of the NBS.

With regard to the rules in the field of market behavior in the insurance sector, since a significant improvement of the regulations regulating this matter is planned, and as the aforementioned rules have great practical importance because they affect the basic activity of insurance companies (from issues of supervision and management of insurance products to issues of placement and distribution of products), continuous and constructive communication between the industry and the NBS before the implementation and prescribing of new obligations would be useful in order to properly assess the level of market development as well as the achieved level of user protection by current regulations and rules.

7. **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.**

Although there has been progress in the field of promoting mediation, especially given the engagement of the NBS in the previous year, as well as the recognition of mediation as a way of resolving disputes by insurance companies, we believe that it is necessary to expand education to all participants in the market, so that users of financial services can also see the benefits of mediation in relation to litigation. Additional promotion of mediation can be achieved through educating the public, organizing educational campaigns and seminars on the benefits of mediation, which would serve to raise awareness of advantages of this method by state institutions, courts, chambers of commerce and business organizations.

FIC RECOMMENDATIONS

- Education of judicial office holders in the field of banking and insurance, and in this sense the introduction of specialized subjects in these areas at the Judicial Academy
- Enabling Electronic Issuance of Bills of Exchange for Individuals
- Permanent Resolution for Disputes Regarding the Loan Processing Fee in the manner described above and amendment to Article 368, paragraph 1 of the Law on Civil Procedure
- Issuance of a legal position by the Supreme Court regarding the proof of contracts concluded at a distance
- Expansion of the domain of the Housing Loan Agreement and expansion of the definition of residential real estate
- Continuous exchange of views and constructive discussions with insurance companies regarding the implementation of the rules on insurance distribution, i.e. regulatory requirements regarding market behaviour
- 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 would be important.