

LAW

ON CONSUMER PROTECTION

I. MAIN PROVISIONS

Scope

Article 1

This Law regulates the fundamental rights of the consumers, conditions and means of consumer protection, rights and responsibilities of the consumer protection organisations, establishment of the system of out-of-court settlement of consumer disputes and the rights and responsibilities of the state institutions in the area of consumer protection.

Fundamental rights of the consumers

Article 2

Fundamental rights of the consumers, in accordance with the terms of this law, are:

- 1) The right to satisfaction of basic needs – Accessibility to vital products and services, such as foodstuffs, clothes, footwear, housing facilities, health care, education, and hygiene;
- 2) The right to safety - Protection from goods and services which are dangerous to life, health, property, or to the environment, or the use or owning of which is prohibited;
- 3) The right to be informed – Obtaining correct information required for a conscious choice from among the offered goods and services;
- 4) The right to choose – Possibility of choice among a number of products and services, at acceptable prices and with quality guarantee;
- 5) The right to be heard – Observance of consumer interests in the process of adoption and realisation of the consumer protection policy and the possibility to be represented through consumer organisations in the procedure of making legislative and executive decisions on issues regarding consumer policy;
- 6) The right to redress – Protection of the rights of the consumer, pursuant to the procedure provided by law, upon violation of their rights and compensation for material and moral damage caused by the trader;
- 7) The right to consumer education - Gaining basic knowledge and skills necessary for making a proper and reliable choice of products and services, knowledge about fundamental rights and responsibilities of consumers, and the ways in which such knowledge may be implemented;
- 8) The right to a healthy and sustainable environment - The right to live and work in an environment that is not harmful to health and wellbeing of present and future generations, and the right to information necessary for assessing the risk to health and wellbeing from the existing environment.

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Mandatory nature

Article 3

The consumer may not waive the rights conferred upon him by the provisions of this Law.

A contract term derogating from the provisions of this Law to the detriment of the consumer shall be null and void.

Nullity of a contract term from paragraph 2 of this article shall not render the contract void in its entirety, if the contract can stand without the null provision.

Any offer made by the consumer shall be revocable, unless otherwise provided by this Law.

This Law shall also apply to the agreements which aim at or result in circumventing the provisions of this Law.

Implementation

Article 4

The provisions of this Law regulating consumer protection in regard to exercising of rights in distance contracts and off premises contracts do not apply to contracts concluded through use of automatic vending machines or automated commercial premises, and through contracts on sale of food or drink in temporary facilities.

The provisions of this law, regulating consumer protection in exercising of rights in off-premises contracts do not apply on off-premises contracts the subject of which is: insurance; financial services the price of which depends on changes on the financial market the trader cannot influence and which appear in the duration of the contract and consumer credit.

The provisions of this law regulating the protection of consumers in exercising of rights from the contract on sale of goods in which the trader is obliged to deliver goods and offer services apply to goods only.

The provisions of this Law regulating the protection of consumers in exercising of rights in the contract on sale of goods are applied also to the contracts on delivery of goods yet to be produced or manufactured.

The provisions of this Law regulating the liability of producers of defective products do not apply to damage caused by nuclear accidents and to liability for the damage regulated by ratified international agreements.

Provisions of this Law regulating the protection of consumers in exercising of the rights in contracts on package tours and timesharing apply also to the rights of consumers in the contract on stay of pupils or students in families abroad or in other adequate accommodation, with regular education at a school or university, lasting longer than three months, or in shorter duration, with consent of the contracting parties, as well as for regular attendance of certain training.

Definitions of certain terms

Article 5

For certain terms used in this law, the following definitions shall apply:

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- 1) *Consumer* means any natural person who procures goods and services on the market for purposes which are outside their business or other commercial activities.
- 2) *Trader* means any natural or legal person who is acting on the market for purposes relating to their business or other commercial purposes;
- 3) *Consumer contract* is any contract concluded between a trader and a consumer;
- 4) *Sale of goods contract* means any contract for the sale of goods by the trader to the consumer including any mixed-purpose contract having as its object both goods and services;
- 5) *Goods* means any tangible movable item, with the exception of goods sold by way of execution or otherwise by authority of law, water and gas where they are not put up for sale in a limited volume or set quantity; and electricity;
- 6) *Distance contract* means any sales or services contract, concluded between a trader and a consumer through predominant use of one or more means of distance communication;
- 7) *Means of distance communication* means any means which may be used

for the conclusion of a contract without the simultaneous physical presence of the trader and the consumer;

8) *Durable medium* means any instrument which enables the consumer or the trader to store electronic data addressed personally to them in a way accessible for future reference and which allows the unchanged reproduction of the information, stored for a period of time adequate for the purposes of data storing;

9) *Off-premises contract* means any sales or services contract concluded away from business premises of the trader, with the simultaneous physical presence of the trader and the consumer, or any sales or service contract for which an offer was made by the consumer in the same circumstances or any sales or service contract concluded on, but negotiated away from business premises.

10) *Business premises* mean: any immovable or movable retail premises, including seasonal retail premises, where the trader carries on his activity on a permanent basis, or market stalls and fair stands where the trader carries on his activity on a regular or temporary basis;

11) *Order form* means an instrument setting out the contract terms, to be signed by the consumer with a view to concluding an off-premises contract;

12) *Product*, in the sense of the provisions of this law which regulate unfair business practices means any goods or service including immovable property, rights and obligations, as well as, in the sense of the provisions of this law which regulate the liability of the producer of defective products, any immovable property separated from or installed in another movable or immovable property, including energy produced or accumulated for provision of light, warmth or movement;

13) *Financial service* means any service of a banking, credit, insurance and pension insurance nature, or service related with voluntary pension funds, investments or payment;

14) *Professional diligence* means increased care and skill which a trader may reasonably be expected to exercise towards consumers in business operation, commensurate with good business customs and the principle of good faith;

15) *Producer* means an entity:

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(1) which produces or imports finished products, goods, raw materials and parts in the Republic of Serbia for the purposes of sale, leasing or other kind of trade,

(2) that purports to be a producer by placing their name, trade mark or other distinctive sign on the goods,

(3) trader of the product that does not contain information on the producer, if, they fail to inform the damaged person in due time on identity of the producer, or the entity from which the product was bought,

(4) trader of an imported product which contains the information on the producer, but not on the importer;

16) *Ancillary contract* means a sale or services contract between a consumer and a trader or a contract concluded between a consumer and a third party based on an arrangement between the trader and the third party, which is related to another contract between the consumer and the trader;

17) *Auction* means a method of sale where goods or services are offered by the trader through a competitive bidding procedure which may include the use of means of distance communication, and where the highest bidder is bound to purchase the goods or the services, except the sale of goods and services through a competitive bidding procedure on the basis of a fixed-price offer;

18) *Public auction* means a method of sale where goods are offered by the

trader to consumers, who attend or are given the possibility to attend the auction in person, through a competitive bidding procedure run by an auctioneer and where the highest bidder is bound to purchase the goods;

19) *Selling price* means the final price of goods or of given quantity of goods, that is the final price of a service, including all taxes and duties;

20) *Unit price of goods* means the final price per kilogram, litre, metre, square metre, cubic metre or other unit of measurement in regular use, which corresponds with the nature of good, with all taxes and duties included;

21) *Unit price of service* means the final price per kWh of electric power, gas or central heating, cubic metre of water or other unit of measurement of a provided service, which is in regular use and corresponds with the nature of service, with all taxes and duties included;

22) *Price per hour or other unit of time* is the final price for an hour of provision of the contracted service, with all taxes and duties included;

23) *Commercial practice* means any act or failure to act of a trader, course of conduct or representation, commercial communication, including advertising directly connected with the promotion, sale or supply of products to consumers;

24) *Contract term* means every provision of a consumer contract, including special terms, the content of which the consumer has either negotiated or could have negotiated with the trader, and general provisions which were drafted in advance by the trader or a third party.

25) *Damage*, in the sense of the provisions of this law which regulate the liability of producers of defective products, is a consequence caused by death or bodily injury, as well as the consequence of destruction or damage of a part of property, which the damaged consumer uses for private use or consumption;

26) *Contract on provision of services* means, in the sense of the provisions of this law which regulate consumer protection in contracts on provision of services, a contract with which the trader obliges to perform a certain task, such as the

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manufacture or repair of a certain item, or performance of a certain physical or intellectual work, and the consumer obliges to remunerate him;

27) *Competent authority* is the Ministry or the public agency whose jurisdiction is to take certain measures for consumer protection with regard to provision of services of general economic interest, in accordance with the authority defined by this or other laws;

28) *Service of general economic interest* means a service wherein the quality, conditions of provision or price are fixed or controlled by a state body or other holder of a public authority, particularly because of high value of initial investment, limited resources necessary for its provision, sustainable development, social solidarity and the need for balanced regional development, with the goal of satisfying the common social interest (electronic communications, electricity and gas, utility services etc.);

29) *Package travel* (package arrangement), which, as a rule, includes transport, accommodation and other tourist services, means a prepared combination of two or more tourist services, defined by the trader or upon request by the consumer, in duration longer than 24 hours, or in shorter duration which includes an overnight stay, as well a several-day stay which includes accommodation only in certain periods or duration, regardless of the separate billing or charging for individual services;

30) *Timeshare contract* means a contract with which the trader obliges, in the span of at least a year or with a tacit extension, to offer on at least two occasions

one or more real estates for use to the consumer, in which he can spend a night, and the consumer obliges to remunerate him;

31) *Long-term holiday product contract* means a contract with which the trader obliges, in the span of at least a year or with a tacit extension, to grant a discount or other privileges or benefits to the consumer, with regard to accommodation, separately or with other tourist services, and the consumer obliges to remunerate him;

32) *Resale assistance contract* means a contract obliging the trader to assist the consumer in buying or selling timeshare or long-term holiday products and the consumer obliges to remunerate him;

33) *The contract on facilitating timeshare exchange* means a contract by which the trader undertakes to include the consumer in a timeshare system, following which the consumers are entitled to cede among them the rights arising from the timeshare contract and remunerate the trader.

34) *Out-of-court settlement of consumer disputes* is a procedure of solving disputes between the consumer and the trader through arbitration, mediation or some other dispute resolution process, in accordance with the law which regulates arbitration, the law which regulates mediation and other rules regulating out-of-court settlement.

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II. CONSUMER INFORMATION

1. Price indication

Price indication duty

Article 6

Unless otherwise provided in this law, the trader shall indicate in unambiguous, easily identifiable and clearly legible manner in the currency which is a legal means of payment in the Republic of Serbia:

- 1) the selling price of goods or service, including the price of goods supplied in the course of the provision of a service;
- 2) the unit price of goods;
- 3) the unit prices of services, in case the price of services is calculated on the basis of a single unit of quantity of the service provided.;
- 4) the price of service per hour or other unit of time, in case the price of service is calculated on an hourly basis;
- 5) the additional costs associated with the provision of services.

In case of selling goods or providing services at the reduced price, the trader shall indicate both the previous and the reduced price, in unambiguous, easily identifiable and clearly legible manner.

Selling price of goods

Article 7

The trader shall indicate the selling price of goods:

- 1) On the goods, i.e. packaging, or on the selling point, i.e. on the place where services are provided
- 2) In the price lists of goods and services;
- 3) On the goods in the shop display.

The trader may opt not to indicate the selling price on the goods or on the packaging in case of the sale of work of art and antiques, if such goods carry a clear indication which allows for their identification on a price list.

Pre-packed goods

Article 8

Apart from the selling price, the trader shall indicate the unit price of the prepacked

goods at the selling point and in the price list.

Selling price of services

Article 9

The trader shall to put up a price list or charge rates for services.

The trader shall indicate the price list or the charge rates for services from paragraph 1 of this article, in the shop display or in business premises, or at other place where the services are being offered.

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If services are offered at the specialist department of a retail business, setting up a separate price list of services offered at the specialist department shall suffice.

Electricity, Gas, Central Heating, and Water

Article 10

The trader who offers or advertises continuous supply of electricity, gas, central heating or water via pipeline, shall clearly indicate, in an offer or advertisement:

- 1) the usage-based unit price of electricity, gas or central heating, including VAT and all other taxes;
- 2) the usage-based unit price of water or gas including VAT and all other taxes.

Traders shall, besides unit price from paragraph 1 of this article, clearly indicate the prices that are not usage-based, including the price of connection to the distribution network.

Gas Station and Parking Places

Article 11

The trader shall legibly and in due time indicate the unit prices of fuel in order to be easily and visibly legible to a driver of a motor vehicle coming along the road.

The trader who is offering parking places for motor vehicles or a lease or of parking places in garages shall legibly indicate at the entrance a price list and the number of free places in order to be easily and visibly legible to a driver of a motor vehicle coming along the road.

Catering facilities

Article 12

In catering facilities, the trader shall indicate the price list of food and drinks on the tables, or present such list to every consumer before taking his order and, upon consumer's request, at the time of payment.

In catering facilities, the trader shall indicate the price list at the entrance of the catering facility from Paragraph 1 of this article as well.

Accommodation facilities (hotel, motel, tourist resort, camp, pension, hostel, overnight accommodation, rest centre, house, apartment, room or similar) the trader shall indicate:

- 1) total price of accommodation, full board and half-board on a visible location;
- 2) amount of the sojourn tax in every room and at the check-in desk;
- 3) selling price of food and drink in price lists which have to be available to consumers in sufficient number and at places where the consumers are served.

If catering facilities from Paragraphs 1 and 3 of this article offer the use of a means of distance communication, the trader shall indicate, the price of use per unit of time or per single use next to that means.

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Prices for provided services from Paragraphs 1, 2, 3 and 4 of this article shall include the service charge and all other additional costs.

Limitations of duty to indicate

Article 13

The trader is not obliged to indicate the unit price of goods and/or service if the unit price of goods and/or service is identical to the selling price. Where the indication of the net weight and the net drained weight for certain pre-packed products is appropriate, it shall be sufficient that the trader indicate the unit price of the net drained weight.

For goods which are not pre-packaged and are measured in the presence of the consumer, the trader shall indicate only the unit price of goods.

Advertising the selling price

Article 14

In any advertisement mentioning the selling price of the goods and/or services, the trader shall also indicate the unit price of goods and/or services, apart from cases laid down in Article 13.

If the price of the service is calculated on an hourly basis, in an advertisement the trader shall indicate the selling price of the service and the price per unit of time.

2. Issuing of the bill

Article 15

The trader shall issue a bill for the paid goods, or services to the consumer. The bill from the paragraph 1 of this article must contain the basic information on:

- 1) name, address and data of importance for establishing the identity of the trader;
- 2) sold goods, i.e. service provided;
- 3) final selling price;
- 4) date of bill issuing.

The bill from the Paragraph 1 of this article must also contain other information in accordance with particular regulations.

3. Information duties

Pre-contractual duty to inform

Article 16

Prior to the conclusion of any sales or service contract, the trader shall provide the consumer in a clear and understandable manner with the following information on:

- 1) the main characteristics of the goods or services;
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- 2) the address and other data relevant for establishing the identity of the trader, such as his trading name or the name of another trader on whose behalf he is acting;
 - 3) the selling price or the manner in which the selling price is calculated if, because of the nature of the product means that the selling price cannot reasonably be calculated, as well as all additional freight, delivery or postal charges; and possibility that such additional charges may be payable;
 - 4) the arrangements for payment, manner and time of delivery, performance of other contractual obligations and the complaint handling policy;
 - 5) the existence of a right of withdrawal, under conditions defined by this law;
 - 6) support that the trader provides to the consumer after the sale, guarantees and conditions under which a consumer is entitled to a guarantee;
 - 7) the duration of the contract where applicable; or, if the contract is openended, the conditions for terminating the contract;

8) the minimum duration of the consumer's contract obligations, where applicable;

9) the existence and the conditions any form of financial guarantees to be paid or provided by the consumer at the request of the trader.

The trader is not obliged to inform the consumer on the information from Paragraph 1 of this article, if those details are obvious from the circumstances of conclusion of the contract on the sale of goods or provision of services.

In case of a public auction, the information under Paragraph 1, item 2 of this article, may be replaced by the address and other data relevant for establishing the identity of the auctioneer.

If the trader and consumer conclude sales or service contract, the information under Paragraph 1 shall form an integral part of the contract.

The burden of proof concerning the fulfilment of the obligation under Paragraph 1 shall be borne by the trader.

The commercial purpose of the provision of the information under Paragraph 1 of this article shall be unequivocally communicated to the consumer.

If upon conclusion of the consumer contract the trader does not act in accordance with the information obligation under Paragraph 1 of this article, the consumer may demand termination of the contract, irrespective to whether the trader had an intention to lead him to conclude the contract, omitting to inform them. The right to demand termination of the contract ceases with expiry of a one-year period from the day of conclusion of the contract.

Additional expenses

Article 17

If the trader has not informed the consumer on the additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, if the trader has not informed the consumer on the fact that such additional charges may be payable by them, the consumer shall not be obliged to pay these additional charges.

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4. Information on payment modalities

Payment through bank or post

Article 18

If the trader informs the consumer to make the payment through the bank or the post, the payment shall be deemed effected on the date on which the bank or the post accepted the proper payment order or the payment of the debt amount or the a payment order by a third party which effects the payment on behalf of the consumer.

III. UNFAIR COMMERCIAL PRACTICES

Prohibition of unfair commercial practices

Article 19

Unfair commercial practices shall be prohibited.

The burden of proof of the factual claims made by the trader before, during and after a commercial transaction in relation to a product rests with the trader.

Notion of unfairness

Article 20

A commercial practice shall be regarded as unfair if:

- 1) it is contrary to the requirements of professional diligence;
- 2) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed to, or of the average member of the group when a commercial practice is directed to a particular group of consumers.

To materially distort the economic behaviour of consumers means to use a commercial practice to appreciably impair the consumer's ability to make an informed decision, thereby causing the consumer to take a transactional decision that he would not have taken otherwise.

Transactional decision means any decision taken by a consumer concerning whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of a product or to exercise a contractual right in relation to the product, whether the consumer decides to act or to refrain from acting.

Commercial practices which are likely to materially distort the economic behaviour only of a clearly identifiable group of consumers who are particularly vulnerable to the practice, or the underlying product, because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee, shall be assessed from the perspective of the average member of that group.

Provisions under Paragraph 4 of this article are without prejudice to the common and legitimate advertising practice of making exaggerated statements or statements which are not meant to be taken literally.

In particular, a commercial practice shall be regarded as unfair if it is misleading, or aggressive, as well as breach of information duty in accordance with this law.

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Any breach of duty of information of the consumer as prescribed under Article 16, of this law, as well as the breach of duty to inform the consumer on their rights in accordance with this law, shall be regarded as an unfair commercial practice, in respect of

- 1) distance contracts;
- 2) contracts on package tours and real estate time sharing;
- 3) indication of prices;
- 4) e-commerce contracts.

The unfair practices include also breach of duty to inform the consumers on their rights in regard to medicinal products for human use; distance marketing of consumer financial services; collective investment in transferable securities; insurance mediation; life assurance and other types of direct insurance; markets in financial instruments; the prospectus to be published when securities are offered to the public or admitted to trading, as prescribed by the laws regulating the respective fields.

Misleading commercial practices

Article 21

A commercial practice shall be regarded as misleading if it leads the consumer to take a transactional action they would not have taken otherwise, by providing false information or deceiving them in respect of:

- 1) the existence or nature of the product;
- 2) the main characteristics of the product, such as its availability, benefits, risks, execution, composition, accessories, aftersale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product;
- 3) the extent of the trader's commitments, the motives for the commercial practice and the nature of the sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the trader or the product;

- 4) the price or the manner in which the price is calculated, or the existence of a specific price advantage;
- 5) the need for a service, part, replacement or repair;
- 6) the nature, attributes and rights of the trader or his agent, such as his identity and assets, his qualifications, status and ownership of industrial, commercial or intellectual property rights or his awards and distinctions;
- 7) the consumer's rights, including the right to repair, replacement or reimbursement or the risks he may be exposed to.

A commercial practice shall also be regarded as misleading if it creates a general impression causing the average consumer to take a transactional decision that he would not have taken otherwise, irrespective to the factual context of the information given.

A commercial practice shall also be regarded as misleading if the trader, having regard to all circumstances of a concrete case, leads an average consumer to take a transactional decision that they would not have taken otherwise, through:

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- 1) any marketing of a product, including comparative advertising, which creates confusion with any products, trademarks, trade names or other distinguishing marks of a competitor;
- 2) non-compliance by the trader with commitments contained in codes of conduct by which the trader has undertaken to be bound.

Misleading omissions

Article 22

A commercial practice shall be regarded as a misleading omission, taking account of all its features and circumstances and spatial or temporal limitations of the communication medium used and any additional measures that the trader has undertaken in order to inform the consumer, if a trader:

- 1) omits material information that the average consumer needs to make an informed transactional decision, and thereby causes or is likely to cause him to take a transactional decision that he would not have taken otherwise;
- 2) hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information, or fails to identify the commercial intent of his address to the consumer if this causes or is likely to cause the average consumer to make a transactional decision that he would not have taken otherwise.

An invitation to purchase and commercial communication which indicates the characteristics and price of the product which the trader encloses to the consumer, must include the following information, if not already apparent from the context:

- 1) the main characteristics of the product, to an extent appropriate to the medium and the product;
- 2) the geographical address and the identity of the trader, and, where applicable, the geographical address and the identity of the trader on whose behalf he is acting;
- 3) the price, including taxes and other duties and additional freight, delivery or postal charges;
- 4) the arrangements for payment, delivery, performance and the complaint handling policy, if they depart from the requirements of professional diligence;
- 5) the existence of the right of unilateral contract rescinding.

Exempt from Paragraph 2 item 3) of this article where the price or the additional expenses cannot be reasonably calculated in advance due to the nature of the product, the trader shall communicate to the consumer the data upon which the price or the additional expenses are calculated.

Practices which are unconditionally misleading

Article 23

Commercial practices which are, regardless of the circumstances of a particular case, considered misleading:

- 1) Untruthful claim by a trader to be acting according to a certain code of conduct;
 - 2) Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorization;
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- 3) Claiming that a code of conduct has an endorsement from a public or other body which it does not have;
 - 4) Claiming that a trader and his commercial practices, or a product, have been approved, endorsed or authorized by a public or private body when they have not, or making such claim without complying with the terms of the approval, endorsement or authorization;
 - 5) Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply, or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered;
 - 6) Making an invitation to purchase products at a specified price, if the trader, with intention to cause the consumer to buy some other product, refuses to show the advertised item to the consumer, or refuses to take order for it or deliver the item within a reasonable time, or if it demonstrates a defective sample of the advertised product to the consumer;
 - 7) Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice;
 - 8) The trader omitting to inform the consumer in an unambiguous manner, before they accept the offer, that, after the sale of certain product, it will provide aftersales service to the consumer in a language which is not in official use in Republic of Serbia;
 - 9) Stating or otherwise creating a false impression that a product can legally be sold;
 - 10) Presenting rights given to consumers in law as a distinctive feature of the trader's offer;
 - 11) Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer; Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer if the consumer does not purchase the product;
 - 12) Promoting a product similar to a product made by a particular manufacturer in such a manner as to deliberately mislead the consumer into believing that the product is made by that same manufacturer when it is not;
 - 13) Establishing, operating or promoting a a system of sale of goods where a consumer pays a fee for the opportunity to receive compensation, which is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products;

14) Falsely claiming that the trader is about to cease trading or move premises;

15) Claiming that products are able to facilitate winning in games of chance;

16) Falsely claiming that a product is able to cure illnesses, dysfunction or malformations;

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17) Passing on materially inaccurate information on market conditions, or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions;

18) Claiming to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent;

19) Describing a product as *gratis*, *free*, *without charge* or similar, if the consumer has to pay anything other than the unavoidable cost of responding to the add and collecting or paying for delivery of the item;

20) Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that he has already ordered the marketed product when he has not;

21) Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer;

22) Creating the false impression that after-sales service in relation to a product is available also on the territory of another state, beside that in which the product is sold;

23) Misusing the word "guarantee" and any words with similar meaning during the conclusion of the contract and advertising related to the sale of goods, if, by the contract on the sale of goods, the consumer does not acquire more rights than he has in accordance with this law.

Aggressive commercial practices

Article 24

A commercial practice shall be regarded as aggressive if, taking account of all its features and circumstances, by harassment, coercion, including the use of physical force, or undue influence, the trader significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct with regard to the product, and thereby causes him, or is likely to cause him to take a transactional decision that he would not have taken otherwise.

Undue influence means exploiting a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the consumer's ability to make an informed decision.

In determining whether a commercial practice uses aggressive practices, account shall be taken of:

1) its timing, location, nature or persistence;

2) the use of threatening or abusive language or behaviour;

3) the conscious exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer's judgment, in order to influence the consumer's judgement;

4) any onerous or disproportionate non-contractual barriers imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader;

5) any threat to take any action that cannot legally be taken.

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Practices which are unconditionally aggressive

Article 25

Commercial practices which are in all circumstances considered aggressive:

- 1) Creating the impression that the consumer cannot leave the premises until a contract is concluded;
- 2) Conducting personal visits to the consumer's home, without their prior consent, except in circumstances and to the extent legally justified to enforce a contractual obligation;
- 3) Making persistent and unwanted solicitations by telephone, fax, e-mail or other distance media, except in circumstances and to the extent legally justified to enforce a contractual obligation;
- 4) Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising his contractual rights;
- 5) Including in an advertisement a direct exhortation to children to buy advertised products, or persuade their parents or other adults to buy advertised products for them;
- 6) Demanding from the consumer to pay, return or keep the product which they have not ordered, except in cases of distance selling;
- 7) Explicitly informing a consumer that if he does not buy the product or service, the trader's job or livelihood will be in jeopardy;
- 8) Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either there is no prize or other equivalent benefit, or taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

Special protection of minors

Article 26

Sale, serving and gifts of alcohol drinks, including beer and tobacco products to persons below the age of 18 is prohibited.

In case of a doubt whether the consumer is a person below the age of 18, the trader is not obliged to sell or serve an alcohol drink, or tobacco product, until the consumer shows valid identity document, passport, or driving licence.

Codes of conduct

Article 27

Code of conduct means an agreement or decision of the trader, or a group of traders, defining the behavior of traders or a group of traders on the market. The trader or a group of traders and code owners are responsible for control of observance of the rules of the Code by the traders.

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The Ministry in charge of consumer protection (hereinafter referred to as the Ministry) shall encourage control of unfair commercial practices by the traders or groups of traders and code owners that have acceded to a certain code.

The Ministry shall encourage traders and code owners to inform the consumers on the existence and contents of their codes of conduct.

IV. CONSUMER PROTECTION IN EXERCISING OF RIGHTS DERIVING FROM DISTANCE CONTRACTS AND OFF-PREMISES CONTRACTS

1. Consumer information and withdrawal rights

Information duty

Article 28

In addition to the general duty to inform the consumer under Article 16; and prior to conclusion of distance and off-premises contracts, the trader shall provide the consumer in a clear and understandable manner, the following information,:

- 1) the conditions and procedures for exercising the right of withdrawal;
- 2) the address of the place of business of the trader, if different from his office or residence address, and address of the trader on whose behalf he is acting, where the consumer can address any complaints;
- 3) the existence of codes of conduct which obliges the trader, and the way to access that code of conduct;
- 4) the cost of using the means of distance communication, where it is calculated other than at the basic rate;
- 5) the fact that the contract will be concluded with a trader and, as a result, that the consumer will benefit from the protection afforded by this Law;
- 6) the fact that the right of withdrawal shall not apply as to services where performance has begun, with the consumer's prior expressed consent, before the end of the withdrawal period;
- 7) the possibility of reaching an out-of-court dispute resolution, where applicable.

Prior to conclusion of the distance contract on financial services, the trader shall provide the consumer, in a clear and understandable manner, with the following information:

- 1) a description of the main characteristics of the financial service;
- 2) the total price including all related fees, charges, taxes, and expenses, that is the way of calculation of the price if the total price of the financial service is not shown;
- 3) special risks involved in the financial instrument;
- 4) period for which the information provided is valid;
- 5) arrangements for payment.

If the trader and the consumer conclude a distant contract or an off-premises contract, the information under paragraphs 1 and 2 of this article become its integral part.

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Information duties with regards to e-commerce

Article 29

Prior to conclusion of the distance contract, the subject of which is the sale of goods or provision of services through electronic communication means, the trader shall inform the consumer on the information contained in articles 16 and 28 of this law allowing them to in a clear manner:

- 1) recognize, store and reproduce full content of the prospective contract;
- 2) identify and correct input errors, prior to the placing of the order;
- 3) electronically consult any relevant codes of conduct to which the service provider subscribes.

The trader under Paragraph 1 of this law shall make available to the consumer the following information, in a clear and comprehensible manner, and prior to the placement of the order by the consumer:

- 1) instructions for forming of the contract with the description of the technical steps to follow, in order to conclude the contract;
- 2) the information on whether or not the contract shall be filed with the service provider, and the description of how to access it;
- 3) the information on the technical means for identifying and correcting input

errors;

4) the languages offered for the contract formation.

Access to data with regards to e-commerce

Article 30

The trader under Article 29 of this law. shall render easily, directly and permanently accessible to the consumers and competent authorities, the following information:

- 1) the name, address and the email address of the trader;
- 2) data regarding the entry in the public register, with indication of public register and the number of the entry, or equivalent means of identification in that register;
- 3) where the activity is subject to an authorization scheme, the particulars of the relevant supervisory authority;
- 4) in case of the regulated profession, *i.e.* occupation or activity for which special conditions or mandatory organisation in chambers of commerce or similar organisations have been prescribed: the name and the address of the chamber of commerce or professional association with which the service provider is registered; service provider's own professional title and the country in which it was granted; a reference to the applicable professional rules of that country and the means to access them;
- 5) amount and manner of VAT payment.

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Duty of information concerning the exercise of the right of withdrawal

Article 31

The trader shall provide the consumer with the withdrawal form for distance contract and the off-premises contract and information on:

- 1) The name, address and the email address of the trader to whom the withdrawal form must be sent;
- 2) A statement that the consumer has a right to withdraw from the contract and that this right can be exercised by sending the withdrawal form on a durable medium to the trader:
 - (1) for off-premises contracts, within a period of fourteen days following the consumer's signature of the order form;
 - (2) for distance sales contracts, within a period of fourteen days following the material possession of the goods by the consumer or a third party, other than the carrier and indicated by the consumer;
 - (3) for distance service contracts, within a period of fourteen days following the conclusion of the contract, unless the consumer explicitly agrees that provision of the service should start before the expiry of the fourteen days period;
 - (4) for distance service contracts on financial services, within a period of fourteen days following the conclusion of the contract, or from the day of notifying the consumer on contents of the contract, if they received the notification after conclusion of the contract;
 - (5) for life insurance distance contracts, within a period of fourteen days following the conclusion of the contract, that is from the day of informing the producer on the contents of the contract if they received an information after conclusion of the contract;
- 3) For all sales contracts, a statement informing the consumer about the time-limits to send back the goods to the trader and about the money refund;
- 4) For e-commerce, a statement that the consumer can electronically fill in and submit the standard withdrawal form referred to in Paragraph 1 on the trader's

website and that he will receive an acknowledgement of receipt of such a withdrawal from the trader by email without delay;

5) A statement that the consumer can use the withdrawal form referred to in Paragraph 1 of this article;

6) The fact that a dispatch of the received goods back to the trader within the period in which the consumer has the right of withdrawal, shall be considered as a statement of withdrawal.

Detailed content of the distance contract withdrawal form and the off-premises contract is prescribed by the Minister in charge of consumer protection (hereinafter referred to as the Minister).

Formal requirements for off-premises contracts

Article 32

If the trader and the consumer conclude an off-premises contract, the information referred to in Article 28 and Article 31 of this law shall be given in the order form, in plain and intelligible language, and be legible.

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Contract under Paragraph 1 of this article is deemed to be concluded after the consumer signs an order form.

An off-premises contract is deemed to be concluded when the consumer signs an order form; and in cases where the order form is not in writing, if the consumer receives a printed copy of the order form; or, if the consumer agrees with that, when they receive a copy of the order form on a durable medium.

The order form shall include the withdrawal form.

Formal requirements for distance contracts

Article 33

With respect to distance contracts, the information referred to in Article 28 and Article 31 shall be given or made available to the consumer prior to the conclusion of the contract, in a way appropriate to the means of distance communication used.

If the trader makes a telephone call to the consumer with a view to concluding a distance contract, he shall disclose his identity and the commercial purpose of the call at the beginning of the conversation with the consumer.

If the contract under Paragraph 1 of this article is concluded through a medium which allows limited space or time to display the information under Paragraph 1 of this article, the trader shall provide at least the information regarding the main characteristics of the product and the selling price.

In the case described in Paragraph 3 of this article, the trader shall inform the consumer in writing on the information contained in Paragraph 1 of this article at the latest at the time of the the delivery of goods, or start of provision of services the latest, unless the consumer was informed on that information in writing before the distance contract was made.

Exempt from Paragraph 4 of this article, the trader can inform the consumer on the information under Paragraph 1 of this article on a durable medium only if the consumer agrees with that.

Performance and Delivery

Article 34

With respect to off-premises and distance contracts, the trader shall execute the order of the consumer within a maximum of thirty days from the day of the conclusion of the contract, unless the parties have agreed otherwise.

The trader may not ask for any advance payment from the consumer on the basis of off-premises and distance contracts.

If the ordered goods or services cannot be delivered, the trader shall promptly inform the consumer on their unavailability.

Paragraphs of this Article do not apply to contracts on financial services.

Consumer right to withdraw and withdrawal period

Article 35

With regard to distance and off-premises contracts, the consumer shall have a period of fourteen days to withdraw from a distance or off-premises contract, without giving any reason.

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The withdrawal from the contract from Paragraph 1 of this article shall fully release the consumer from any obligation arising from the contract save for the expenses of returning the goods to the trader.

The withdrawal statement for distance or off-premises contract is deemed to be timely if it was enclosed to the trader within the period under Paragraph 1 of this article, or if the consumer returns the goods they received by the contract under Paragraph 1 of this article.

The withdrawal statement has legal effect from the day on which it is dispatched to the trader.

In the case of an off-premises contract, the withdrawal period shall begin from the day when the consumer signs the order form or in cases where the order form is not on paper, when the consumer receives a copy of the order form on another durable medium, or, if the consumer agrees, a copy of the order form on a durable medium and it ends with expiry of the last hour of the last day of the period.

In the case of a distance contract, the period under paragraph 1 of this article shall begin from the day following the material possession of the goods by the consumer or a third party other than the carrier and indicated by the consumer and it shall end with expiry of the last hour of the last day of the period.

In the case of a distance contract for the provision of services, under Paragraph 1 of this article, the withdrawal period shall begin from the day of the conclusion of the contract and it ends with expiry of the last hour of the last day of the period.

In the case of a distance contract on financial services, the period under Paragraph 1 of this shall begin from the moment of conclusion of the contract, that is from the moment of informing the consumer on the contents of the contract, if they receive that information after the contract has been concluded and it ends with expiry of the last hour of the last day of the period.

Exempt from Paragraph 1 of this article, in case of distant contracts on life insurance, the consumer is entitled to withdraw from the contract within thirty days without giving any reason.

If the trader belatedly informs the consumer on the existence of a right of withdrawal, the withdrawal period under Paragraph 1 of this article shall commence when the consumer receives the information on a right of withdrawal in writing or on a durable medium, if the consumer agrees. In this case, the consumer may withdraw from the contract at any time, including the time before the belated information on the existence of a right of withdrawal reaches him.

Exercise of the right of withdrawal

Article 36

In the case of the consumer withdrawing from a distance contract, or offpremises contract, they shall inform the trader on their decision on withdrawing from the contract in writing, or on durable medium.

The consumer may enclose either in a statement addressed to the trader

drafted in his own words, or using the model withdrawal form referred to in Article 31 of this law.

The return of goods to the trader within the period under Article 35, Paragraph 1 of this law, shall be considered a timely statement of withdrawal.

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For e-commerce the trader shall facilitate for the consumer, beside the possibility of withdrawal from the contract under Paragraph 1 of this article, to terminate the contract also by filling in and submitting the withdrawal form under article 31 of this law on the trader's website in electronic form.

In the case under Paragraph 4 of this article, the trader shall send to the consumer the acknowledgement of receipt of the withdrawal statement without delay.

Legal consequences of withdrawal

Article 37

The exercise of the right of withdrawal from distance contract, or off-premises contract shall terminate the obligations of the parties to perform under the distance or off-premises contract

The trader shall reimburse any payment received from the consumer within thirty days from the day on which he receives the withdrawal statement.

For off-premises sales contracts or distance sales contracts, the trader shall refund the amount the consumer paid upon the contract when they have received or collected the goods back, or when they have received evidence that the consumer sent the goods back to the trader, whichever is the earliest.

If before the the expiration of the withdrawal period from off-premises sales contracts or distance sales contract, following the material possession of the goods by the consumer or a third party indicated by the consumer, the consumer shall send back the goods or hand them over to the trader or to a person authorized by the trader to receive them, within fourteen days from the day on which he sent his withdrawal statement to the trader, unless the trader has offered to collect the goods himself.

In the case under Paragraph 4 of this article, the consumer shall only be charged for the direct cost of returning the goods.

In the case of a distance contract for financial services, the supplier shall return to the consumer without delay and no later than 30 days any sum received, with the exception for the services actually rendered with the express consent of the consumer.

The consumer cannot be required to pay any amount when withdrawing from an insurance contract.

Effects of the exercise of the right of withdrawal on ancillary contracts

Article 38

If the consumer exercises his right of withdrawal from a distance or an offpremises contract, any ancillary contracts shall be automatically terminated, without any costs for the consumer.

The rule under Paragraph 1 of this article applies to the credit agreements linked to the consumer contracts, regardless of whether the credit was granted by the trader or by a third party.

In case the credit is granted to the consumer by a third party for the purpose of financing the obligations from a certain contract with the trader:

1) the trader shall inform the creditor on termination of the contract;

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2) the creditor shall reimburse to the consumer the sum of money, together

with interest, that has been paid for the goods or services up to the moment of withdrawal, without delay and not later than 30 days from the day he was informed about the withdrawal.

Exceptions from the right of withdrawal as regards distance contracts

Article 39

The consumer can not withdraw from distance contract, unless otherwise agreed, in case of:

- 1) services contract, if trader started providing of services with the consumer's prior expressed consent, before the end of the withdrawal period;
- 2) sales contract or services contract for which the price of goods and services is dependent on fluctuations in the financial market which cannot be controlled by the trader;
- 3) contract for delivery of sealed audio or video recordings or computer software which were unsealed by the consumer;
- 4) contract on gaming and lottery services.

The consumer can not withdraw from distance contract on financial services in case of:

- 1) financial services whose price depends on fluctuations in the financial market outside the supplier's control;
- 2) contract on travel, baggage and similar short-term insurance of less than a month's duration;
- 3) contract that has been fully performed by both parties at the consumer's express request.

Exceptions from the right of withdrawal as regards off-premises contracts

Article 40

The consumer can not withdraw from off-premises contract, unless otherwise agreed, in case of:

- 1) contracts for the supply of foodstuffs, beverages or other goods intended for current consumption in the household, selected in advance by the consumer by means of distance communication and physically supplied to the consumer's home, residence or workplace by the trader who usually sells such goods on his own business premises;
- 2) necessity of immediate performance of the contract in order to respond to an immediate emergency, except for additional goods sold or services provided, which are not strictly necessary to meet the immediate emergency of the consumer. If the consumer has specifically requested the trader, by means of distance communication to visit his home for the purpose of repairing or performing maintenance upon his property, the right of withdrawal shall apply to those additional services or goods, if they are not strictly connected with the repair or maintenance.

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2. Restrictions on the use of certain means of distance communication

Direct marketing

Article 41

Direct marketing through phone, fax or electronic mail is prohibited without prior consent of the consumer.

Direct marketing through other means of distance communication is prohibited without prior consent of the consumer.

If the consumer explicitly agrees to the use of telephone marketing, fax, or electronic mail, they shall be informed by the trader on the commercial nature of the

communication in a clear and comprehensible manner.

Inertia selling

Article 42

It is prohibited to supply goods or services to the consumer without their being ordered by the consumer beforehand, where such supply involves a demand for payment.

The absence of a response from the consumer following such an unsolicited supply shall not constitute consent.

No claims against the consumer may be grounded on a delivery of unsolicited goods and services. The consumer is entitled to consider the supply of unsolicited goods and services an unconditional promotional gift.

It shall not be considered as the case under Paragraph 1 if the trader:

- 1) delivers other goods or provides another service of the same price and quality to the consumer instead of ordered goods or services;
- 2) informs the consumer that they are not obliged to accept the goods or services which they have not ordered and to pay for sending the goods back to the trader.

Advertising using the means of distance communication

Article 43

When advertising through means of distance communication, the trader shall make the advertising messages clearly identifiable as such, making also the natural or legal person on whose behalf the advertising message is made clearly identifiable. The trader shall make the promotional competitions or games and special offers clearly identifiable as such and the conditions which are to be met to qualify for them shall be easily accessible, and clearly and unambiguously presented.

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V. CONSUMER PROTECTION IN EXERCISING OF THE RIGHTS FROM CONTRACTS CONTAINING UNFAIR TERMS

Transparency requirements

Article 44

Contract terms shall be binding on the consumer in so far as they are expressed in plain, intelligible language, and understandable to a reasonable person as educated and informed as the particular consumer.

Contract terms shall be made available to the consumer in a manner which gives him a real opportunity of becoming acquainted with them before the conclusion of the contract, with due regard to the means of communication used.

Contract term shall be binding on the consumer if the consumer has agreed to it.

A term predrafted by the trader in a manner indicating that the consumer has accepted it unless they explicitly opt out of that term, is not binding for the consumer.

Interpretation of contract terms

Article 45

In case of doubt about the meaning of a contract term, the interpretation most favourable to the consumer shall prevail.

Unfair contract term

Article 46

Unfair contract terms are null and void.

A contract term shall be considered unfair:

- 1) if it results in a significant disproportion in contractual obligations of the parties to the detriment of the consumer;
- 2) if it causes execution of the contract to be disadvantageous to the

consumer without justifiable explanation;

- 3) if it causes execution of the contract to be substantially different from what the consumer legitimately expected;
- 4) if it violates transparency requirements of the trader;
- 5) if it violates the principle of good faith.

The unfairness of a term shall be assessed taking into account:

- 1) the nature of the goods or services to which the contract relates;
- 2) the circumstances under which the contract has been concluded;
- 3) other terms of the same consumer contract or of another related contract;
- 4) the manner in which the contract was drafted and communicated to the consumer by the trader in accordance with the transparency requirements.

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Contract terms considered unfair in all circumstances

Article 47

Contract terms, which have the object or effect of the following, shall be unfair regardless of the circumstances of a particular case:

- 1) excluding or limiting the liability of the trader for death or personal injury caused to the consumer through an act or omission of that trader;
- 2) limiting the trader's obligation to respect commitments undertaken on his behalf by his agents or, conditioning the obligation of the trader to perform or accept the obligation taken over on their behalf by their agent with a particular condition which is at the trader's discretion;
- 3) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy for protection of their rights, particularly by requiring the consumer to take disputes exclusively to arbitration contrary to the legal provisions of this law;
- 4) restricting or limiting the evidence available to the consumer or imposing on him a burden of proof which, according to the applicable law, should lie with the trader.

A contract term shall be regarded as unfair if it is giving the trader

- 1) the right to establish whether the delivered goods or provided services are in conformity with the contract;
- 2) the exclusive right to interpret contract terms.

Contract terms presumed to be unfair

Article 48

A contract term which has the following object or effect shall be presumed to be unfair:

- 1) excluding or limiting the legal rights of the consumer vis-à-vis the trader or a third party in the event of total or partial non-performance or inadequate performance by the trader of any of the contractual obligations, including the rights of the consumer to offset a debt owed to the trader against a claim which the consumer may have against him;
- 2) allowing the trader to retain a payment by the consumer where the latter fails to conclude or perform the contract, or refuses to conclude the contract, where the same right is not granted to the consumer;
- 3) requiring any consumer who fails to fulfil their contractual obligation to pay damages which significantly exceed the damage suffered by the trader;
- 4) allowing the trader to terminate the contract at will where the same right is not granted to the consumer;
- 5) enabling the trader to terminate an open-ended contract without reasonable notice except where the consumer has failed to perform their contractual

obligations;

6) tacit reconduction of a fixed-term contract, if it is required that the consumer gives a long notice not to accept extension of the contract in relation to the period for which the contract has been concluded;

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7) allowing the trader to increase the price agreed with the consumer when the contract was concluded without giving the consumer the right to terminate the contract;

8) obliging the consumer to fulfil all his obligations where the trader has failed to fulfil all his obligations;

9) giving the trader the possibility of transferring his obligations under the contract without the consumer's consent;

10) restricting the consumer's right to re-sell the goods by limiting the transferability of any guarantee provided by the trader;

11) enabling the trader to unilaterally alter the terms of the contract including the characteristics of the product or service;

12) unilaterally amending contract terms communicated to the consumer in a durable medium through contract terms to which the consumer has not consented through the means of distance communication.

VI. CONSUMER PROTECTION IN EXERCISING OF RIGHTS DERIVING FROM SALES CONTRACTS

1. Delivery and passing of risk

Delivery

Article 49

Unless the parties have agreed otherwise, the trader shall deliver the goods by transferring the material possession of the goods to the consumer or to a third party, other than the carrier or shipper and indicated by the consumer, within a maximum of thirty days from the day of the conclusion of the contract.

If trader doesn't deliver the goods within the period under Paragraph 1 of this Article, he shall, within seven days from expiry of the period, return to the consumer sums that he has paid..

Passing of risk

Article 50

The risk of accidental loss of or damage to the goods until delivery of goods to the consumer or third party designated by the consumer, other than a carrier or shipper and indicated by the consumer, shall be borne by the trader..

The risk of accidental loss of or damage to the goods after delivery of goods to the consumer or third party designated by the consumer, other than a carrier or shipper and indicated by the consumer, shall be borne by the consumer.

If the consumer has terminated the contract or has requested for the goods to be replaced because the goods delivered do not conform to the contract, the risk under para. 1 and 2 of this article shall not be passed to the consumer.

If the consumer or a third party, other than the carrier or shipper and indicated by the consumer, has failed to make a delivery of the goods, the risk under Paragraphs 1 and 2 of this Article shall pass to the consumer after the expiration of the delivery period, thirty days after the day of the conclusion of the contract, in case the parties have not agreed on the date of delivery.

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2. Conformity of goods

Conformity with the contract

Article 51

The trader shall deliver the goods in conformity with the sales contract. Delivered goods shall be presumed to be in conformity with the contract if they satisfy the following conditions:

- 1) they comply with the description given by the trader and possess the qualities of the goods which the trader has presented to the consumer as a sample or model;
- 2) they are fit for any particular purpose for which the consumer requires them and which was known or must have been known to the trader at the time of the conclusion of the contract;
- 3) they are fit for the purposes for which goods of the same type are normally used;
- 4) they show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the trader, the producer or his representative, particularly in advertising or on labelling.

Liability for the lack of conformity

Article 52

The trader shall be liable for the lack of conformity with the contract which was present in the moment of passing of the risk to the consumer, irrespective of whether they knew about the lack of conformity.

The trader shall be liable for the lack of conformity of goods with the contract which appears after passing of the risk to the consumer, if it derived from the cause which existed before that.

The trader shall not be liable for the lack of conformity if, in the moment of contract conclusion the consumer knew or could not be unaware of the lack of conformity of goods with the contract, or if the cause of the lack of conformity was in the material provided by the consumer.

The trader shall be liable for the lack of conformity which could have been easily noticed by the consumer, if the trader declared that the goods are in conformity with the contract.

The trader shall not be bound by public statements, in regard to the characteristics of goods if:

- 1) he was not, and could not reasonably have been, aware of the statement in question;
- 2) by the time of conclusion of the contract the statement had been corrected;
- 3) the decision to buy the goods could not have been influenced by the statement.

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Incorrect installation

Article 53

The trader obliged by the contract to provide the installation of the goods for the consumer is liable for the lack of conformity of the delivered goods which appeared due to incorrect installation.

If the incorrect installation of goods is due to a shortcoming in installation instructions, the trader is liable for the lack of conformity caused by the consumer through the installation.

Legal effects of the lack of conformity

Article 54

If the goods delivered do not conform with the contract, the consumer is

entitled to demand from the trader to remove this non-conformity, without an additional charge, through a repair or replacement, or to demand price reduction or terminate the contract in relation to those goods.

The consumer, primarily, is entitled to choose whether they will have the lack of conformity remedied by repair or replacement.

If remedy of the lack of conformity, as provided for under Paragraph 2 of this Article, is not possible or it represents a disproportionate burden for the trader, the consumer may demand price reduction or terminate the contract.

The disproportionate burden for the trader in terms of Paragraph 3. of this article, is present if in relation to price reduction and termination of the contract it imposes excessive costs, in view of:

- 1) the value the goods would have if they conformed with the contract;
- 2) significance of the conformity in particular case;
- 3) whether lack of conformity can be remedied without causing significant inconvenience for the consumer.

Any repair or replacement must take place within reasonable time without significant inconvenience for the consumer, taking into account the nature of the goods or the purpose for which the consumer acquired the goods.

All expenses required for the goods to conform with the contract, particularly cost of work, material, takeover and delivery shall be borne by the trader.

The consumer is entitled to terminate the contract, if they cannot exercise the right on repair or replacement, or if the trader failed to conduct the repair or replacement within reasonable period without causing significant inconvenience for the consumer.

In the case of the trader's obligations that stem from the unconformity of goods, the producer is treated as a warrantor in relation to the consumer.

The consumer may not rescind the contract if the lack of conformity is minor.

The rights under Paragraph 1 of this article, do not affect the right of the consumer to demand from the trader to be reimbursed for the damage due to nonconformity,

in accordance with general rules on liability for the damage.

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Time limits and burden of proof

Article 55

The trader shall be liable for the lack of conformity if the lack of conformity becomes apparent within two years as from the time the risk passed to the consumer.

Any lack of conformity which becomes apparent within six months of the time when the risk passed to the consumer, shall be presumed to have existed at that time unless this presumption is incompatible with the nature of the goods and the nature of the lack of conformity.

In the case of second-hand goods, the trader and the consumer may agree on a shorter liability period, which may not be less than one year.

3. Guarantee

Guarantor and guarantee card

Article 56

The guarantee is any statement with which the guarantor gives a statement in regard to the goods and is legally binding under conditions given in the statement, an in marketing of that good.

The guarantee card is a document in writing or in electronic form, or on a durable medium, which contains all data of the guaranty, drafted in plain intelligible

language and be legible, particularly the information on:

- 1) The rights of the consumers provided for under Article 54 of this law, with notice that the contractual guarantee does not affect those rights;
- 2) The name and address of the guarantor, contents of the guarantee and conditions for fulfilment of rights from the guarantee, particularly its duration and spatial restrictions;
- 3) Non-transferability in the case of the rights in the guarantee are nontransferable, not effecting the presumption from Article 48 item 10) of this law.

The guarantor is obliged to issue a guarantee card upon demand of the consumer.

The validity of the guarantee is not affected by violation of the obligation of the guarantor referred to under para. 2 and para 3 and the consumer may demand for the guarantee to be fulfilled in accordance with the statement given.

The guarantee neither excludes, nor includes the rights of the consumer with regard to conformity of the goods with the contract.

Misuse of the word 'guarantee'

Article 57

The trader shall refrain from employing the word *guarantee* or any corresponding expression in the sales contracts, or in the public statements in relation to the sales contracts if, under the sales contract, the consumer is not granted any rights in addition to the rights he already enjoys under this Law.

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4. Claim

Article 58

The consumer can make a claim with the trader for exercising their rights under Article 54 and Article 56 of this law.

The trader shall promptly respond to the consumer, within no more than 15 days from the date of reception of the claim, with pronouncement upon the demand and proposal for its resolving.

VII. PRODUCT LIABILITY

Defect

Article 59

A product is defective when it does not provide the safety which is rightfully expected, taking all circumstances into account, including the advertising, the use which could reasonably be expected and the time when the product was put into circulation.

A product shall not be considered defective solely because a product of a higher quality was later put into circulation.

Right to compensation

Article 60

The injured person is entitled to compensation if they can prove the damage, the defect and the causal relationship between defect and damage.

The injured person is entitled to compensation of, moral damage in accordance with the general rules on civil liability.

Liability of the producer

Article 61

The producer shall be liable for the damage caused by their defective product regardless of whether they knew about the defect or not.

Exemptions from liability

Article 62

The producer shall not be liable if they prove that:

- 1) they did not put the product into circulation;
- 2) the defect which caused the damage did not exist at the time when the product was put into circulation or that it came into existence afterwards;
- 3) the product was neither manufactured by him for sale or any form of distribution, nor manufactured by him in the course of his business;
- 4) the defect is due to compliance of the product with mandatory regulations adopted by a competent body.

The producer of a component part shall not be liable if they prove that the defect is attributable to the design of the product or to the instructions given by the producer.

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The liability of the producer may be reduced or disallowed when the injured person, or any person for whom the injured person is responsible, has contributed by fault to the occurrence of damage.

The liability of the producer of a defective product shall not be reduced when a third party partially contributed to the damage.

Liability of two or more persons for the same damage

Article 63

Where two or more persons are liable for the same damage, they shall be liable jointly and severally.

Unenforceable claims

Article 64

An expiration period of three years shall apply to proceedings for the recovery of damages, starting from the day when the injured party became aware of the damage, the defect and the identity of the producer.

In any case, the rights of the injured person shall expire within the period of 10 years from the day when the producer put the defective product into circulation.

Limitation and exclusion of liability

Article 65

Liability of the producer for the damage caused by a defective product may not be limited or excluded by contractual provision.

VIII. CONSUMER PROTECTION IN EXERCISING OF RIGHTS DERIVING FROM SERVICES CONTRACTS

Quality of material

Article 66

In case it is agreed upon that the trader manufactures the object out of their own material, and the quality of material is not determined, the trader shall provide material of average quality.

Provisions of Articles 49 to 58 are applied to the trader with regard to the quality of the material used.

Material supplied by the consumer

Article 67

The trader shall be liable for damage caused by defect in the material which was noticed or should have been noticed by the trader, if he fails to warn the consumer of defects in the material delivered to him.

If the consumer demands the object to be manufactured from the material whose defects were indicated to him by the trader, the trader shall proceed according to the consumer's demand; unless it is obvious that the material is not suitable for the work, or that manufacturing from such material would harm the reputation of the trader, in which case the trader may rescind the contract.

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The trader shall warn the consumer of defects in their order and about other circumstances they are aware of, or should have been aware of, which may be of importance for quality or timeliness of the performance; otherwise, the trader shall be liable for damage.

Provided service

Article 68

The service is deemed to be provided, when the contracted work is completed.

The object of the service is in possession of the trader for the purposes of service delivery, the service shall be deemed provided when the object is returned to the consumer after the completion of the work.

If the period for service delivery is not agreed, the trader is obliged to provide the service in a period required for provision of a similar service.

The trader shall not be liable for delay caused by the consumer's faulty behaviour.

Service provision

Article 69

Unless otherwise agreed, the trader shall acquire the material and spare parts necessary for the delivery of the service.

The trader shall carry out the work as agreed under the contract, by the rules of his profession and with professional care.

Delegating service provision to third party

Article 70

The trader may entrust the performance of the work to the third party, unless the contract or the nature of the work commands otherwise.

In the above case, the trader shall be liable for the execution and conformity of the service

Performing additional work

Article 71

If, during the provision of the service, the additional work becomes necessary, the trader shall ask the permission of the consumer to perform such work.

If the consumer cannot be reached within reasonable time, the additional work may be done only if the costs charged for the work are minor in relation to the agreed price of the service, or in relation to the cost estimate given for the service.

If the consumer cannot be reached within reasonable time, and if the maximum price was agreed under the contract; the price may not be increased because of the costs of performing additional work..

The trader shall notify the consumer on hazard to health or property from postponing of additional work.

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Supervision

Article 72

The trader shall enable the consumer to:

- 1) supervise the performance of the work;
- 2) give instructions as per nature of work.

Should the trader fail in their duties under Paragraph 1 of this Article, it shall be presumed that there is lack of conformity of the provided service to the contract.

Duty to inform

Article 73

Should it, either upon the conclusion of the contract or thereafter, become

evident that the service, taking into account its price, the value and characteristics of the object of the service or other circumstances, evidently would not be appropriate from the point of view of the consumer, or that its price is much higher than what the consumer may reasonably expect, the trader shall without delay inform the consumer thereof.

If the trader cannot inform the consumer about the facts under Paragraph 1 of this article within reasonable time, or fails to issue the necessary instructions to the consumer; the trader shall interrupt the provision of the service unless it can be reasonably assumed that the consumer, nevertheless, wishes the service to be provided.

Should the trader fail in their duties under this Paragraphs 1 and 2 of this Article, it shall be presumed that there is lack of conformity of the provided service to the contract.

Price of the service

Article 74

The trader may demand payment for preliminary investigations of contents or price of the services, that has made at the request of the consumer, except if the consumer, on the basis of the practice prevailing in the field or on other grounds, had reason to presume that the preliminary investigations would be undertaken without charge.

The trader shall not be entitled to demand payment for the work or material lost or other additional costs, if the subject of contractual obligation that was in possession of the trader is damaged, destroyed or otherwise lost without fault of the consumer.

Cost estimate

Article 75

If the trader has given a cost estimate with an express guarantee of its accuracy, the final price may not exceed the estimate.

If the trader has given a cost estimate without an express guarantee of its accuracy, the final price may exceed the estimate by 15 per cent at the most, unless otherwise is agreed upon by the contracting parties.

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The cost estimate shall be deemed to relate to the total price charged for the service, unless otherwise agreed.

Should a dispute arise as to whether a quoted amount is to be deemed a fixed price, a cost estimate or an indicative price, the trader shall prove their claim.

Payment of the price and itemization

Article 76

If the moment of payment for the service has not been agreed, the consumer shall pay the price after performance of the service as laid down by Article 68 of this law.

The consumer is not obliged to pay the price before supervision and acceptance of the provided service.

In case that the contractual obligation of the trader includes several separately charged services, the trader shall, upon request of the consumer, give him a written itemization on the basis of which the consumer may evaluate the determination prices for each of the services provided.

A consumer may refuse to pay for the service until they receive the itemization under Paragraph 3 of this Article.

Consumer's failure to pay the price

Article 77

If the payment is delayed, due to the consumer failing to pay the price or a part of the price in advance, the trader may terminate provision of the service until the price is paid.

The consumer shall immediately be notified by the trader of the termination of the service.

Should the interruption of the delivery cause a danger to health or a considerable hazard to property, the trader shall undertake the measures necessary to prevent the danger.

A trader who terminates performance under Paragraphs 1, 2 and 3 of this Article shall be entitled to compensation by the consumer for the extra costs thereby incurred.

Rescission due to breach of the terms of contract

Article 78

If the trader breaches terms of the contract, or does not work properly, in a way which may cause lack of conformity of the results of their work to the contract; the consumer may warn the trader accordingly, and assign him an adequate time limit for conforming their work to their obligations.

Should the trader fail to act according to the consumer's demand within the time limit under Paragraph 1 of this article, the consumer may rescind the contract and claim damages.

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Rescission prior to the expiry of time limit

Article 79

If it is obvious that the trader cannot provide service that is in conformity with the contract within the time limit, where the time limit is an essential element of the contract, the consumer may:

- 1) rescind the contract without leaving additional reasonable time required for provision of the service;
- 2) request compensation of damage.

If the trader is late in completing the work, where the contractual period is not an essential element of the contract, the consumer who has no interest in provision of the service after expiry of the agreed period can:

- 1) rescind the contract, without leaving time required for provision of the service;
- 2) claim damages.

Conformity of service

Article 80

The trader shall render the service in conformity with the services contract.

The service does not conform with the contract if:

- 1) the service, by its content, quality and purpose does not correspond the information the trader has given when advertising the service, or otherwise before the conclusion of the contract
- 2) the service contradicts the information the trader has given during the provision of the service, if such information may be deemed to have had an effect on consumer's decisions;
- 3) the service is not fit for a particular purpose for which the consumer required it, and which they was known or must have been known to the trader at the time of the conclusion of the contract;
- 4) it does not have regular characteristics of the services of same type;
- 5) the service does not correspond to reasonable expectations, given the nature of the services and taking into account any public statements of the trader on

the specific characteristics of the service, particularly in advertising;
6) the service, by its contents, quality and purpose, does not correspond to the description that a third name gave on behalf of the trader before contract formation, through an advertisement or in a similar way.

The trader is not liable for the lack of conformity of the service if:

- 1) they did not know, or was not obliged to know that a third part gave the description on their behalf referred to under Paragraph 2 item 6) of this article;
- 2) if the description under Paragraph 2 item 6) of this Article was corrected timely and adequately.

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Liability for lack of conformity

Article 81

Where the services do not conform to the contract, the consumer is entitled to demand from the trader to provide a service that is in conformity with the contract. Where the remedying the lack of conformity by performance in compliance with the original mandate is unlawful, impossible or would cause the trader a disproportionate effort, the consumer may choose to have the price reduced or the contract rescinded.

If the service does not conform with the contract, the provisions of Art. .49. to 58 are applied in regard to liability of the trader.

Liability of persons acting on order

Article 82

The trader shall be liable for persons taking part in the performance of work under their order, as if they had performed the work personally.

IX. SERVICES OF GENERAL ECONOMIC INTEREST

Access to services of general economic interest

Article 83

The consumer has the right to be regularly and continuously supplied with services of general economic interest, of an appropriate quality at an affordable price. In the procedure of connection of the consumer to the distribution network the trader shall:

- 1) act publicly;
- 2) avoid discrimination of consumers;
- 3) calculate the price per real cost of provided services.

Vulnerable consumer

Article 84

A vulnerable consumer is a consumer that, due to economic or social position, living conditions, special needs or other difficult personal circumstances procures the service of general economic interest under particularly difficult conditions.

The Government shall define the conditions under Paragraph 1 of this Article, with regard to the criteria for defining vulnerable consumers in certain areas of services of general economic interest, upon the proposal of the Minister and minister in charge of the respective area.

National program for protection of vulnerable consumers

Article 85

The national program for protection of vulnerable consumers defines the measures of support to programs for increasing the availability of services of general economic interest for vulnerable consumers.

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The national program for protection of vulnerable consumers is adopted by

the Government following the joint proposal of the Ministry and the ministry in charge of social affairs.

The Ministry and the ministry in charge of social affairs monitor the state in the field of protection of vulnerable consumers, report to the Government and the public on the realisation of the program under Paragraph 1 and propose measures for improving the state with regard to protection of vulnerable consumers.

Protection against disconnection

Article 86

The trader may disconnect the consumer from the supply of services of general economic interest if the consumer fails to pay for the provided services for two months from the maturity date of the first unpaid bill, unless otherwise stipulated by the law.

Prior to disconnection under Paragraph 1 of this Article, the trader shall notify the consumer in writing:

- 1) about the obligation per contract on provision of services of general economic interest;
 - 2) that the obligations under issue 1, Paragraph 2 of this Article may be fulfilled within 30 days at the most from the date of submitting of the notification.
- If the consumer contests the existence or the scope of the obligation from Paragraph 1 of this article, and continues to pay subsequent bills for the same service, the trader is not allowed to disconnect and suspend the supply of service of general economic interest until the end of court proceedings.

Pre-contractual information

Article 87

Prior to the conclusion of any contract for the provision of services of general economic interest, and in addition to other information duties of the trader laid down by Article 16 of this law, the trader shall provide the consumer with the following information:

- 1) consumers' right to be supplied with the service of general economic interest of a specified quality at affordable prices;
- 2) amount of the tariff covering connection charge, all types of usage charges and maintenance if the trader offers it, including details of standard discounts applied and special and targeted tariff schemes, and the timeframe for connection to the supply network;
- 3) the means by which up to date information on all applicable tariffs and maintenance charges may be obtained;
- 4) the right of the consumer to change the provider of general economic interest without additional charge;
- 5) any compensation and refund arrangements which apply if the contracted service quality levels are not met.

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Further information duties of the trader

Article 88

The trader shall notify the consumer directly of any change in charges, not later than one month before the changes come into effect, unless otherwise stipulated by the law.

The trader shall give to the consumer publicly and in due time adequate notice of any intention to modify the standard terms and general conditions of the contract.

Right to withdraw

Article 89

The consumer has a right to withdraw from the contract for provision of services of general interest if he does not agree with the trader's notice of modifications in charges or standard terms.

The consumer is obliged to pay for the services delivered prior to the withdrawal.

Right to change the service provider

Article 90

The trader is obliged to allow the consumer the conclusion of the contract with another trader that provides the services of general economic interest of same type, without paying charge and additional expenses.

The period within which the trader is obliged to allow the consumer to conclude the contract under Paragraph 1 of this article shall not be longer than a month from the day when the trader is informed about that intention, unless otherwise stipulated by law.

If the contract on provision of services of general economic interest is concluded for a fixed term, the date of contract expiry must be indicated on every bill.

Billing itemisation

Article 91

The trader shall enclose the bill for provided services of general economic interest without delay and in terms which facilitate for the consumer to monitor the consumption and charge for the period of no more than one month.

The trader shall state, in the bill for general economic interest services the elements which facilitate for the consumer to:

- 1) verify and control the incurred charges;
- 2) adequately monitor their consumption and thereby exercise a reasonable degree of control over their expenditure in relation to the quality of the service rendered.

The trader shall enclose the consumer at no charge, detailed billing itemisation upon their request.

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Services which are free of charge to the consumer are not to be identified in the itemized bill.

Help-line and claims

Article 92

The traders providing services of general economic interest shall install easily accessible and free-of-charge help-lines to help the consumers regarding connection problems, the quality and usage of services of general economic interest.

X. CONSUMER RIGHTS SPECIFIC TO CONTRACTS IN PACKAGE

TOUR AND TIME SHARING

Pre-contractual information

Article 93

The trader shall, within a reasonable time and before the conclusion of package tour contract, provide the consumer with the information on following:

- 1) the total price of the package, including all taxes, and additional costs chargeable such as landing, embarkation or disembarkation fees or the tourist taxes;
- 2) the total amount the consumer must pay before the start of package tour, the payment schedule, the amounts of the forthcoming instalments of price;
- 3) the destination, the means, characteristics and categories of means of transport, and the dates, times and points of departure and return;
- 4) times and places of the temporary stops, type of transport and features of means of transport and equipment and the degree of comfort of means of

transport and services provided in menas of transport;

- 5) the accommodation (location, type, category and features of the tourist facility under the rules of the host state), accommodation unit (room, apartment, studio, equipment, comfort level and other features);
- 6) number, type features and way of serving the meals;
- 7) visits, excursions or other services which are included in the total price agreed for the package tour;
- 8) the optional conclusion of an insurance policy to cover the cost of cancellation of package tour by the consumer in the event of accident or illness, or the costs of assistance and return from a package tour;
- 9) the information required for realisation of a package tour, travel documents and the deadlines for obtaining necessary visas, as well as with customs and administrative formalities;
- 10) detailed and up-to-date information on health formalities required for the package tour and the stay, and complete health recommendations;
- 11) conditions for realisation of a package tour, number of passengers and period for information of the consumer on termination of the contract on a package tour, in case of an insufficient number of passengers;
- 12) the name, business name and of the trader for service of court summons. Information of the trader's local representative, or of local agency on whose assistance a consumer in difficulty could call; and an emergency telephone number and other information that will enable him to contract the trader directly, shall be

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enclosed by the trader at conclusion of the contract on a package tour and not later than by the beginning of the package tour.

Information on obligation to enclose the details which allow a direct contact with a minor that travels or spends time abroad without parents' or guardian escort and on the name, address and phone number of a person responsible for the minor in the place of abode abroad, the trader shall provide to the consumer before conclusion of the contract on a package tour and not later than 14 before beginning of the package tour.

Accessibility of information

Article 94

The information referred to in Article 93 of this law shall be provided to the consumer in a clear and comprehensible manner:

- 1) free of charge;
- 2) in writing or on another durable medium easily accessible to the trader;
- 3) in letters and numbers of the same size as the rest of the contract.

In case of bookings by use of means of distance communication, the trader shall make the information referred to in Article 93 permanently accessible to the consumer during the duration of reservation.

The burden of proof concerning obligation under Article 93 of this law shall be borne by the trader.

Advertising

Article 95

In advertising regarding package tour the trader shall inform the consumer about the right to be informed on data referred to in Article 93 of this law and the procedure for obtaining that information.

If package tour is offered for sale to the consumer in person, at a promotion or sales event, the trader shall in the invitation clearly indicate the commercial purpose and the nature of the event, and the information referred to in Article 93 shall

be available to the consumer at any time during the event.

Formal requirements for concluding package tour contract

Article 96

The package tour contract shall be concluded in writing, or on another durable medium.

The consumer shall receive from the trader, after conclusion of the contract on package tour at least one copy of the contract.

The information referred to in Article 93 shall form an integral part of the contract, and they shall not be altered unless the parties expressly agree otherwise, or unless the changes are consequence of force majeure.

The trader shall communicate to the consumer any change in the information referred to in Article 93, of this Law in reasonable time, prior to the contract conclusion, in writing or on another durable medium easily accessible to the consumer.

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In case of booking package tour by use of means of distance communication the trader shall communicate to the consumer any change in the information referred to in Article 93 of this law, within a reasonable period prior to the contract conclusion by use of means of distance communication.

The trader shall expressly mention in the contract any change in the information referred to in Article 93 of this law which occurs in the period from informing of consumer on certain details until conclusion of the contract.

In addition to the information referred to in Paragraph 3 of this article, the package tour contract shall also contain:

- 1) special requirements of consumer to which the trader agreed;
- 2) address, procedure and time limits for filing the consumer complaints as well as the time limit for resolving consumer complaints;
- 3) the name and the address of the trader and, the name and the address of the insurer;
- 4) signatures of the parties; and the date and place of the contract conclusion;
- 5) the conditions for rescission of the contract under Article 99 of this law.

If trader concludes a contract on package tour through an agent or intermediary, the name and the address of the agent or intermediary must be explicitly stated in the contract..

Replacement of consumer with another person

Article 97

The consumer may pass the right to use the contracted services before the departure to a third party who fulfils special conditions defined for the package tour.

In case under Paragraph 1 of this article, the trader may request only compensation of expenses resulting from the replacement.

In order to pass on the reservation to a third party, the consumer has to inform the trader on the intended replacement of reservation within a reasonable time before the departure.

The consumer guarantees to the trader for any remaining payment and for any additional costs arising from the replacement of reservation.

Alteration of the contract prior to departure

Article 98

If, before the date of departure agreed upon under the contract, the trader finds that they is constrained to alter any of the essential contract terms (for example, price, destination, means, characteristics and categories of transport, or the dates,

times and points of departure and return, or the type of accommodation, its location, category or degree of comfort) they shall communicate the proposed alterations to the consumer without delay, in writing or on another durable medium easily accessible to them.

In case of on-line bookings through means of distance communication, the trader shall communicate the proposed alterations under Paragraph 1 of this article to the consumer without delay, by use of the means of distance communication which was previously employed in their communication.

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The consumer may accept the changes of the contract referred to under Paragraph 1 including the change of total price of package tour or terminate the package tour contract without a charge.

The consumer shall inform the trader of their decision under Paragraph 3 of this article without delay, on paper or another durable medium, or by use of the means of distance communication which was previously employed in their communication.

Withdrawal

Article 99

The consumer may prior to the commencement of the package tour at any time withdraw from contract, entirely or partially.

Should the consumer withdraw from the contract prior to the commencement of the package tour within a time limit which qualifies as reasonable with regard to the kind of package travel (timely withdrawal), the trader shall be entitled only to reimbursement of administrative expenses, which cannot exceed 5% of the price of package travel.

In case of an untimely withdrawal from contract, the trader may request from the consumer compensation as percentage of the price of package travel, which shall be determined in proportion to the time left before departure, and which must be justified economically.

If the consumer withdraws from the contract for circumstances they could not avoid or remove and which, in case of their existence at the time of conclusion of the contract, would be a justified reason for the contract not to be concluded and in the case if the consumer provides an adequate replacement, or the replacement is found by the trader, the trader has the right only to compensation of the administrative expenses.

Consequences of rescission

Article 100

If, before the date of departure agreed upon under the contract, the consumer rescinds the contract pursuant to Article 98 of this law, or if the trader rescinds the contract for whatever reason other than the fault of the consumer, the consumer shall be entitled to opt for one of the following:

- 1) to accept a substitute package travel of equivalent or higher quality where the trader is able to offer him such a substitute, and to pay the difference in prices;
- 2) to accept a substitute package travel of lower quality where the trader is able to offer him such a substitute, in which case the trader shall refund the difference in prices to the consumer;
- 3) to be reimbursed for all the sums they paid to the trader under the contract on package travel.

The trader shall to compensate the consumer for the costs resulting from the rescission, except when:

1) the rescission is on the grounds that the number of persons enrolled for the package is less than the minimum number required, but only if the trader informed the consumer prior to the contract conclusion, of a minimum number of
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persons which is required for the package travel to take place and on five-day deadline for informing the consumer in the event of rescission;

2) the termination is for the reasons of impossibility of performance for which none of the parties is responsible, where the overbooking does not qualify as impossibility of performance.

Special rights of students or pupils

Article 101

In the case of organising stay of pupils, or students for schooling, that is studies abroad, the trader shall, with the cooperation of the student or pupil, to ensure lodging, supervision and care for the student or pupil in a host family, in accordance with the standards reasonably expected in the country of origin.

The trader shall arrange the possibility of regular university or school attendance for the student or pupil during their stay in the host country.

The trader shall inform the consumer, at least 14 days prior to the departure, of the name, address and telephone number of the host family, and of the name, address and telephone number of a person responsible at the place of stay whose assistance may also be demanded while staying abroad.

The trader shall provide the required information to the student or pupil on culture, habits and way of life in the host country.

If the trader has failed to fulfil their obligations under Paragraphs 3 and 4 of this article, the consumer is entitled to rescind the contract prior to departure at no cost.

The burden of proof concerning the fulfilment of their obligations under Paragraphs 3 and 4 of this article lies with the trader.

The consumer may rescind the contract at any time prior to departure. In case of rescission after the departure, the trader shall arrange for repatriation of the student or pupil.

The trader has the right to reimbursement of the costs of repatriation of the student or pupil, in case the consumer rescinds the contract after departure due to reasons which cannot be attributed to the trader.

1. Package tour conformity

Liability

Article 102

The trader shall provide the consumer with the package tour in a way that was concluded and in accordance with the information given to the consumer, as provided under Article 94 of this law.

The package tour is in conformity to the contract if it holds warranted characteristics or if it is suitable for customary use or for the use assumed under the contract.

The trader is responsible for the conformity of service, including services rendered to the consumer by third party (providers of transport, lodging, nutrition and entertaining, or cultural, sports or other programs for leisure).

The provisions of Articles 80 to 82 of this law shall apply to trader's liability for the conformity of package travel, unless otherwise stipulated.

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Immediate relief in case of lack of conformity

Article 103

If, after the departure, the trader finds that the services in conformity to the contract are not provided, or that they will not be able to procure them, they shall, within reasonable time, make suitable alternative arrangements at no extra cost to the consumer for the continuation of the tour without additional cost for the consumer and, where appropriate, compensate the consumer for the difference between the services agreed upon and those supplied.

If provision of the service under Paragraph 1 of this article is not possible or if the consumer does not accept the alternative arrangements for good reasons, the trader shall compensate the consumer for the costs resulting from the alterations after the departure, and provide the consumer at no extra cost with the equivalent means of transport back to the place of departure, or to another return-point to which the consumer has agreed.

If the trader fails to provide the consumer with services under Paragraph 1 of this article, or to provide the consumer with the equivalent means of transport back to the place of departure, or to another return-point to which the consumer has agreed, the consumer may:

- 1) acquire such arrangements or transport by himself;
- 2) return with an adequate transportation mean to the place of departure or other place agreed with the trader.

In case under Paragraph 3 of this article, the consumer may claim reimbursement of the expenses against the trader.

Right to price reduction

Article 104

The trader, intermediary, trader's local representative, or the local agency the consumer is advised to call in case of inconvenience, shall make prompt efforts to:

- 1) address the consumer's complaints during the execution of the package tour;
- 2) remedy any departure from the contract, which the consumer points out.

If the notified departure from the contract on package tour was not remedied on the spot, the consumer is entitled to have the price proportionally reduced.

If the notified departure from the package tour contract that was not remedied on the spot, amounts to a substantial non-performance or partial performance in relation to the scope and quality of the services agreed upon under the contract, the consumer is entitled to have the paid cost of the package tour reimbursed.

The reduction of price is precluded if the consumer negligently fails to notify the failure in provided and contracted services.

Rescission due to lack of conformity

Article 105

If the rendered package tour is not in conformity to the contract, the consumer may demand from the trader to remedy he spotted failures in a reasonable period of time.

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If the trader fails to procure a relief for the lack of conformity within reasonable time in accordance with Article 103, the consumer shall be entitled to rescind the contract.

The consumer is not obliged to let a reasonable period of time to the trader to for remedy of the lack of conformity if:

- 1) if alternative suitable arrangements are impossible, or if the trader has explicitly refused to provide the consumer another appropriate service;
- 2) they have no interest in remedy of the lack of conformity.

The costs of transport back to the place of departure, or to another returnpoint

to which the consumer has agreed, and other extra costs in relation to rescission shall be borne by the trader.

Impossibility of performance

Article 106

Should performance of the trader become impossible due to event for which none of the parties is responsible, the consumer's obligation shall be terminated as well.

If, in case under Paragraph 1 of this article, the consumer has performed a portion of their obligation, they may request from the trader restitution in accordance with the rules on unjust enrichment.

The costs of transport back to the place of departure, or to another returnpoint to which the consumer has agreed, shall be borne by parties to the contract in equal shares, while other extra costs in relation to termination of the obligations shall be borne by the consumer.

Liability for damage

Article 107

The consumer may demand reimbursement for damage, including immaterial loss, caused by non-performance, partial performance or delay in performance of obligations arising out of contract on package tour, irrespective of whether such obligations are to be performed by the trader or by third party, who supposed to fulfil obligations from the package tour contract on behalf of trader.

If in the case under Paragraph 1 the consumer requests compensation for the damage from the trader, for the reason that a third person that was supposed to fulfil the obligation from the contract on package tour on behalf of the trader, or if the obligation is partially fulfilled or the fulfilment is late, the trader may demand refund for the paid amount from the third party.

The trader shall be released from the liability under Paragraph 1 if they prove that the non-performance, partial performance or delay in performance was caused by consumer's intentional or grossly negligent behaviour.

Evidence of security in case of insolvency

Article 108

The trader shall provide evidence of security for the refund of the paid price, necessary expenses of the consumer's return to the place of departure, if the case of non-performance of the service from the contract on package tour due to insolvency of the trader.

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Obligations set out in Paragraph 1 are provided by means of either:

- 1) insurance against insolvency of the trader; or
- 2) unconditional bank guarantee collectable on first call.

The insurer or the banking institution may limit its liability for the total amount to be reimbursed by it under Article 2 of this law in one year to RSD 10 billion. If the total amount to be reimbursed by the consumer finance guarantor under this Law in one year exceeds this amount, the individual reimbursement claims shall be reduced in proportion to their partaking in the maximum amount, unless otherwise stipulated.

The trader may only demand or accept payments towards the price of the package tour from the consumer prior to the end of the package tour, if a guarantee or insurance certificate has been given to the consumer.

The consumer shall have a direct unconditional claim against the consumer finance guarantor in case of trader's insolvency.

The consumer may not lose the rights under the insurance contract due to the trader's default in paying insurance premiums.

Complaints handling and cut-off period

Article 109

The consumer shall notify the trader, intermediary, trader's local representative, or the local agency the consumer is advised to call in case of inconvenience, within one month from the detection, in writing or other appropriate form and at the earliest opportunity, of any failure in performance of the contract on package tour which they perceives on the spot.

The trader shall inform the consumer before departure, in a clear and comprehensible manner, on paper or another durable medium easily accessible to them, of the consumer's duty to notify, referred to in Paragraph 1, and of any possible consequences of their failure to notify.

The trader shall provide to the consumer a convenient and accessible means of communication with the person responsible for receiving consumer complaints during the execution of the package tour.

If the trader fails to fulfil their duty in accordance with Paragraphs 2 and 3, the consumer's failure to notify the trader, intermediary, trader's local representative, or the local agency the consumer is advised to call in case of inconvenience, of any failure in performance of the contract on package tour which they perceives on the spot, shall not influence the validity of the consumer's complaint or any of their further requests.

The consumer shall be precluded from exercising their rights under Articles 104 for reduction of price, 105 for contract rescission and 107 for reimbursement of damage if they fail to inform the trader in time on deficiencies of provided services, unless if the consumer failed to comply with the time limit with no fault of their own.

Implementation of provisions on package tour

Article 110

The rights and obligations of consumers in view of provisions of Art. 4. para. 6, Art. 5. para.1, para.29) and articles 93. to 109, pertain also to a natural entity that uses the package tour in the course of their profession or craft and to the basis of the
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contract between the trader and a third party which concluded the contract on their behalf or passed the contractual obligation to them.

2. Real estate time sharing

Pre-contractual information in respect of timeshares

Article 111

Within a reasonable time before the time sharing contract is concluded the trader shall provide the consumer with accurate and full information listed in the standard information forms for timeshare contracts, long-term holiday product contracts, resale contracts and exchange contracts.

The standard information forms referred to in Paragraph 1 shall be provided by the trader free of charge, on paper or another durable medium easily accessible to him, in a clear and comprehensible manner.

The standard information forms for time sharing contracts, long-term holiday product contracts, resale contracts and exchange contracts, shall be regulated by the Government, following the joint proposal of the ministry and the ministry in charge of tourism

Advertising

Article 112

Advertising regarding timeshare, long-term holiday product, resale or exchange contract, shall indicate the possibility and the procedure of obtaining the information referred to in Article 111.

If timeshare, long-term holiday product, resale or exchange contract is offered for sale to the consumer in person, at a promotion or sales event, the trader shall clearly indicate the commercial purpose and the nature of the event. Information referred to in Article 111 shall be available to the consumer at any time during the promotional or sales event.

A timeshare or long-term holiday product shall not be marketed or sold as an investment.

Formal requirements in respect of contract formation

Article 113

Timeshare, long-term holiday product, resale or exchange contract shall be concluded in writing, on paper or durable medium

After signing timeshare, long-term holiday product, resale or exchange contract the trader shall provide at least one copy of the signed contract to the consumer.

In case of formation of timeshare, long-term holiday product, resale or exchange contract, information referred to in Article 111 shall form an integral part of the contract, obliging the trader and they shall not be altered unless the parties expressly agree otherwise, or unless the changes are consequence of force majeure. Any change in the information referred to in Article 111 shall be communicated to the consumer within a reasonable time prior to the contract formation, on paper or another durable medium.

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Any change in information referred to in Article 111 which appears in the period after the consumer provided the information until the contract is concluded, shall be expressly mentioned in the contract

Timeshare, long-term holiday product, resale or exchange contract shall contain:

- 1) information on date and place of contract formation;
- 2) name, address and signature of the consumer;
- 3) name, address and signature of the trader, or name, address and signature of the authorised person of the trader.

Within a reasonable time, prior to formation of the contract, the trader shall expressly inform the consumer on:

- 1) their right of withdrawal;
- 2) period within which the trader can withdraw from the contract;
- 3) prohibition of advance payment prior to expiry of the period within which the trader can withdraw from the contract.

The contract clauses referred to under in 7 of this article regarding the consumer's rights shall be signed separately by the consumer.

Timeshare, long-term holiday product, resale or exchange contracts shall include a separate standard withdrawal form.

The separate standard withdrawal form for timeshare, long-term holiday product, resale or exchange contracts shall be regulated by the Government, following the joint proposal of the ministry and the ministry in charge of tourism.

Right of withdrawal

Article 114

The consumer has a period of fourteen days from contract forming to withdraw from the timeshare, long-term holiday product, resale or exchange contract or binding preliminary contract, without giving any reason

If the exchange contract is offered to the consumer together with and at the same time as the timeshare contract, only a single withdrawal period shall apply to

both contracts, as calculated for the purposes of withdrawal from the timeshare contract.

Extension of the withdrawal period

Article 115

If the trader fails to enclose a withdrawal form to the consumer in writing or on a durable medium, the consumer may withdraw from time sharing contracts, longterm holiday product contracts, resale contracts and exchange contracts in the period of a year and 14 days from the day of reception of the concluded contract or binding preliminary contract.

If the trader encloses a withdrawal form to the consumer for timeshare, longterm holiday product, resale or exchange contract before a year has passed since reception of the concluded contract, or binding preliminary contract, the withdrawal period begins from the day when the consumer receives a withdrawal form.

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If the trader fails to communicate to the consumer the information under Art. 111, in writing or on a durable medium, the consumer is entitled to withdrawal from the contract or binding preliminary contract timeshare, long-term holiday product, resale or exchange contract within the period of three months and fourteen days from the day of reception of the concluded contract, or preliminary contract.

If the trader communicates to the consumer the data under Art. 111, before expiry of the period of three months from the day of reception of the concluded contract on the timeshare, long-term holiday product, resale or exchange contract the withdrawal period begins from the day of reception of the notification.

Exercising the right of withdrawal

Article 116

The statement through which the consumer withdraws from the timeshare long-term holiday product, resale or exchange contract has legal effect if it is communicated in writing or on another durable medium.

The statement referred to in Paragraph 1 can be communicated by the consumer to the trader on withdrawal form.

The statement referred to in Paragraph 2 is deemed to be communicated timely if sent before expiry of the withdrawal period.

Effects of the withdrawal

Article 117

The exercise of the right of withdrawal from the timeshare, long-term holiday product, resale or exchange contract, terminates the obligation of the parties to perform or to conclude a contract.

Where the consumer exercises the right of withdrawal from the timeshare, long-term holiday product, resale or exchange contract, they shall neither bear any cost nor be liable for any value corresponding to the service which may have been performed until withdrawal.

Advance payment

Article 118

In relation to timeshare, long-term holiday product, resale or exchange contracts, any advance payment, provision of payment guarantees, reservation of money on accounts, explicit acknowledgement of debt or any other consideration to the trader or to any third party by a consumer is prohibited before the expiry of the withdrawal period.

In relation to resale contract, any advance payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt or any other consideration to the trader or to any third party by the consumer is prohibited before

the actual sale has taken place or before the trader has otherwise discharged all their duties under the resale contract

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Contract on long-term holiday products

Article 119

For long-term holiday product, payment shall be made according to a staggered payment schedule, setting out equal amounts of instalments of price for each year of the length of the contract.

Any payment contrary to the Paragraph 1 of this article is prohibited.

The payments, including any membership fee, shall be divided into yearly instalments, each of which shall be of equal value.

The trader shall send a written request for payment, on paper or another durable medium, at least fourteen days in advance of each due date.

After the first instalment payment onwards, the consumer may terminate the contract without incurring any penalty by giving notice to the trader within fourteen days of receiving the request for payment for each instalment.

Termination of ancillary contracts

Article 120

If the consumer exercises their right to withdraw from the timeshare, long-term holiday product, resale or exchange contract, any exchange contract ancillary to it, or any other ancillary contract is automatically terminated, without any cost for the consumer, including the contract on a loan, regardless of whether the trader or a third party granted the loan.

In case the credit is granted by a third party, the trader is obliged to inform the creditor that the consumer has withdrawn from the timeshare, long-term holiday product, resale or exchange contract.

Resale of timeshare and long-term holiday product contracts

Article 121

The trader is obliged to advise and support the consumer in case the latter intends to resell a timeshare contract or a long-term holiday product contract.

In case the trader does not provide sufficient advice and support as under Paragraph 1, the consumer may request the back sale of timeshare contract or a long-term holiday product contract by the trader.

Evidence of security in the event of insolvency

Article 122

The provisions of Article 108 in relation to security in the event of insolvency of the trader, apply to evidence of security of the trader under timeshare contracts

Joint liability

Article 123

The trader, persons taking part in the sale of timesharing under the trader's order, persons entrusted by the trader to perform tasks under the timesharing contract, other traders in the chain of sale of timesharing, as well as the intermediaries, shall be jointly liable to the consumer for performance under the contract and for the consequences of non-performance.

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XI. THE STRATEGY AND SYSTEM OF CONSUMER PROTECTION

The Strategy for Consumer Protection

Article 124

The Strategy for Consumer Protection (hereinafter referred to as the Strategy) includes long-term objectives and activities for the protection of consumer rights and interests in the Republic of Serbia and an action plan for realisation of the strategy.

Upon the proposal of the ministry in charge of consumer protection the Government shall adopt the Strategy for the period of five years. The Action Plan referred to under Paragraph 1 is realised through annual operative plans adopted by the Government.

Institutions in charge of consumer protection

Article 125

Institutions in charge of consumer protection are the Ministry and other institutions and organisations according to their competence, consumer protection organizations and associations, professional and chambers of commerce and other market participants.

Institutions in charge of consumer protection under Paragraph 1 cooperate with the purpose of developing a system and exercising of rights and interests of the consumers.

National Council for Consumer Protection

Article 126

For the purpose of strengthening the system of consumer protection and cooperation of the bodies, organisations and other institutions in charge of consumer protection, the Government shall establish the National Council for Consumer Protection (hereinafter referred to as the National Council).

The National Council involves representatives of ministries and other state institutions and public authorities, consumer protection organisations and associations, professional and chambers of commerce and other market participants, as well as independent experts specialised in consumer protection.

The National Council shall particularly :

- 1) participate in the making of the Strategy;
- 2) report to the Government on situation in consumer protection area and realisation of the Action Plan;
- 3) propose measures and activities for enhancing consumer protection, particularly in regard to advising and assisting consumers in exercising their rights through advisory centres and informing the public on all issues of importance for consumer protection.

The National Council is presided over by the Minister.

Expert and administrative duties for the needs of the National Council are done by the Ministry.

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Organisations and associations

Article 127

Consumer protection organizations and their associations, in the sense of this law are organisations established in accordance with the law regulating the establishment and legal status of associations of citizens, the purpose of which is protecting consumer rights (hereinafter referred to as: organisations).

The organisations are independent in realisation of the goals of consumer protection and are obliged to observe the interests of the consumers only.

The managing position in the governing bodies of the consumer protection organisations cannot be held by:

- 1) state officials and officials of bodies of local self-government employed in the Ministry;
- 2) persons in a managing or supervisory role with a trader or a traders' association;
- 3) persons in a managing or supervisory role in a political party or union.

Activities of consumer organisations

Article 128

Consumer organisations shall particularly engage in the following activities:

- 1) informing, educating, advising and assisting consumers;
- 2) conducting research studies and comparative tests of goods and services, through accredited and designated bodies for assessing the conformity in accordance with particular regulations;
- 3) cooperation with appropriate public bodies and institutions in the country and abroad.

Consumer protection organisations are obliged to publish annual activity reports including records of income, sources of income and expenses and to enclose it to the Ministry by March 31 of the current year, for the previous year.

Registration of consumer organisations

Article 129

The Ministry is in charge of registering organisations which meet the following requirements:

- 1) They are established and registered in accordance with the Law on regulating associations of citizens;
- 2) They represent the collective interests of consumers;
- 3) They promote and defend consumer interests especially in advising and assisting consumers in enforcing their rights;
- 4) They provide evidence on the availability of sufficient personal resources and professional skills;
- 5) They have at least 50 members.

A consumer protection organisation or association is considered to represent the collective interests of consumers if, as referred to in Paragraph 1, Item 2), if the - 53 -

purpose of its' association or activity is related with questions of interests for a greater number of consumers.

The organisations or associations, for registering in accordance with Paragraph 1, shall submit an application to the Ministry. The registration contains the following data: name of organisation or association, registration with the Business Registers' Agency, activities in the previous year, personnel capacity and number of members of the organisation or association.

Along with the application under Paragraph 3, the evidence on fulfilment of conditions under Paragraph 1 is also enclosed.

An organisation or association is to be deleted from the record of organisations and association in case of:

- 1) failure to fulfil the conditions under Paragraph 1;
- 2) failure to enclose annual activity report in accordance with Art. 128, para. 2;
- 3) violation of the prohibition under Art. 131, para 3 of this law, or other serious violation of this law.

The Ministry shall make the records under Paragraph 1 publicly available on its web-page.

The Minister defines the conditions under Paragraph 1, and the content of the registration under Paragraph 3, as well as contents and method of keeping records on association and organisations.

Powers of consumer organizations

Article 130

The consumer organization or association registered according to Article 129 is entitled to represent the interests of consumers in:

- 1) consultative bodies in the field of consumer protection;
- 2) consumer disputes before the courts or in out-of-court settlement of consumer disputes;
- 3) proceedings before other state authorities.

Financing of consumer organisations

Article 131

The activities carried out by the registered consumer organisations or associations referred to in Article 129 may be financed from the state budget. Bodies of the Autonomous Province and local self-government units shall support the activities of consumer organisations within their jurisdictions. The organisations and associations are prohibited to receive non-refundable means from traders and traders' associations, save for charged services (training and similar).

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XII. OUT-OF-COURT SETTLEMENT OF CONSUMER DISPUTES

Consumer dispute

Article 132

The consumer dispute is any dispute appearing from consumer – trader contractual relations.

The consumer dispute, within the meaning assigned by this law excludes the following disputes.:

- 1) death or personal injury, or impaired health;
- 2) provision of health or legal services;
- 3) transfer of real estate right.

The consumer dispute, within the meaning assigned by this law, excludes the disputes which value is below RSD 1,000,000.

The consumer dispute can be resolved through out-of-court settlement.

The out-of-court settlement procedure is considered confidential and urgent.

The party involved in an out-of-court settlement procedure which breaches the obligation under Paragraph 5 of this article is deemed to be responsible for the damage caused to the other party as a consequences of such an action.

The parties involved out-of-court settlement procedure for consumer disputes are considered to be equal.

Initiating the out of court settlement procedure for consumer disputes

Article 133

The out of court settlement procedure is initiated with acceptance of the proposal for out of court settlement by the other party, depending on the kind of the out of court procedure within which the consumer dispute is resolved, upon the proposal of the consumer, that is organisation, or association.

Intermediaries and arbitrators for consumer disputes

Article 134

Parties in the consumer dispute may assign the resolution of the consumer dispute to one or more intermediaries (mediators) chosen from the list of intermediaries, in accordance with the Law regulating the intermediation. Parties in the consumer dispute may entrust resolving of a consumer dispute through a mutual consent to the arbitrators they choose in accordance with the Law regulating the arbitration issue.

Right to judicial protection

Article 135

The initiation and leading of out of court settlement procedure of consumer

disputes does neither excludes nor affects the exercising of rights to judicial protection in accordance with the law.

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Proper implementation of other regulations

Article 136

Provisions of the Law regulating arbitration, that is mediation and other rules regulating out of court settlement of disputes are accordingly applies to the procedure of leading and completion of the out of court settlement.

XIII. PROCEEDINGS AGAINST UNFAIR CONTRACT TERMS AND UNFAIR COMMERCIAL PRACTICES

Initiating proceedings against unfair terms in consumer contracts and unfair commercial practices

Article 137

The consumer whose right or interest has been infringed may initiate the procedure for:

- 1) injunction against unfair terms in consumer contracts;
- 2) injunction against unfair commercial practices;
- 3) skimming-off actions.

The request under Paragraph 1 can also be submitted by an organisation or association referred to in Article 129, for harm done to the collective interest of consumers.

Lis pendens

Article 138

Until an initiated proceeding from Art. 137 comes to an end, no new proceedings may be started per the same request.

Court jurisdiction

Article 139

The proceedings from Art. 137 can be initiated and led in front of the court of appropriate jurisdiction, in accordance with the law regulating the jurisdictions of courts.

Application of civil procedure law

Article 140

The proceedings from Art. 137 shall be led duly in accordance with the law on civil procedure, if this law does not stipulate otherwise.

Publishing court practice

Article 141

The Ministry shall publish the available court practice in regard to submitted requests under Art. 137 and judgements delivered upon those requests, based on information obtained from the Ministry in charge of judicial affairs.

The Ministry shall make the information under Paragraph 1 available on its web-page.

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Value of the subject matter

Article 142

In proceedings from Art. 137, the value of the subject matter is established for the amount of the total value of goods or services in cases contained in the request, up to a RSD 500,000 maximum.

Injunctions against unfair contract terms and unfair commercial practices

Article 143

In the proceedings from Art. 137, the competent court may:

- 1) declare null and void any unfair term in the consumer contract and determine that a specific commercial practice is unfair, as per this law;
- 2) order the trader to immediately discontinue contracting unfair terms or unfair commercial practices in dealings with consumers;
- 3) order that the trader corrects, at their own expense, any piece of advertising which qualifies as an unfair commercial practice under this law;
- 4) order the trader to publish at their own expense that the injunction of unfair contract terms in consumer contracts or the injunction of unfair commercial practice was imposed upon it through the decision of a competent court.

Prior notice

Article 144

Before submitting the request, the plaintiff from Art 137 of this law shall give notice to the defendant and offer the opportunity of out of court settlement. The provisions of this Law on out of court settlement of consumer disputes are applied accordingly to the procedure of out of court settlement under Paragraph 1.

Summary proceedings

Article 145

At the request of the plaintiff from Article 137 of this law, the Court shall issue an order by way of summary proceedings to the trader to discontinue use of unfair terms in consumer contracts and unfair commercial practices in dealings with the consumers.

The preliminary order under Paragraph 1 shall remain in force until a decision about the claim from Art. 137 of this law is reached in the ordinary procedure.

Skimming-off actions

Article 146

If the trader against whom a legally binding judgement was delivered as per the request under Art. 137 of this law fails to observe this decision in the given period of time, any person with a justifiable interest is entitled to submit a claim to the court for passing a measure for dispossession of illegally acquired gains.

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If, in the procedure at the request under Paragraph 1 of this Law, the value of goods or services is smaller than RSD 2,000 per consumer, the court will determine the amount of reimbursement for the illegally acquired gains, imposing an obligation to pay the amount of the total value of goods or services in cases of established unfair terms or unfair commercial practices, up to 5% of the total yearly income of the trader, calculated in accordance with the rules regulating the protection of competition.

The funds obtained by the measure under Paragraph 2 shall be transferred to the budget of the Republic of Serbia.

XIV. SURVEILLANCE

Surveillance authority

Article 147

The control over implementation of this Law shall be conducted by the Ministry, the ministry in charge of tourism, the ministry in charge of health, the ministry in charge of agriculture, forestry and water management, the ministry in charge of energy, the ministry in charge of transport, the ministry in charge of telecommunications, the ministry in charge of planning, construction and environment protection, as well as the ministry in charge of finance.

Inspection surveillance is conducted by the ministries under Paragraph 1 through inspectors with jurisdiction in relevant fields.

The ministries from Paragraph 1 shall cooperate in conducting surveillance, exchange information, provide direct assistance and take joint measures and activities for conducting the inspection surveillance.

Jurisdictions of authorised inspectorial bodies

Article 148

In conducting the inspection surveillance, the inspector in charge has all the rights, duties and jurisdictions prescribed by this Law and the laws regulating inspection surveillance in the relevant field.

The inspector in charge, during surveillance, checks whether the trader:

- 1) indicates prices in accordance with the article 6 – 12 and article 14 of this Law;
 - 2) informs the consumer prior to the formation of a contract in accordance with Article 16 of this Law;
 - 3) uses unfair commercial practices, in accordance with the articles 23 and 25 of this Law;
 - 4) sells, serves or gives tobacco products or alcohol to underage persons, in accordance with the Art. 26;
 - 5) conducts direct marketing in accordance with Art. 41. of this Law;
 - 6) supplies unordered goods or services to the consumer, in accordance with Art. 42. item 1. of this Law;
 - 7) conducts advertising through means of distance communication in accordance with Art. 43. of this Law;
 - 8) misuses the word *guarantee* in accordance with Art. 57. of this Law;
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- 9) responds to the consumer's complaints in accordance with Art. 58. para. 2. of this Law;
 - 10) disconnects the consumer from the supply network, in accordance with Art. 86. of this Law;
 - 11) establishes the help-line dealing with connection to the supply network, quality and usage of services of general economic interest in accordance with Art. 92 of this Law;
 - 12) advertises or offers for sale package tours, in accordance with Art. 95. of this Law;
 - 13) informs the consumer on data pertaining to the host family or the responsible person at the place of stay whose assistance may also be demanded while staying abroad, in accordance with Art. 101. item 3. of this Law;
 - 14) provides collateral for the case of insolvency in accordance with Art. 108. item 1. и Art. 122 of this Law;
 - 15) advertises timeshare, long-term holiday products, resale or exchange in accordance with Art. 112. of this Law;
 - 16) allows separate signing of the contract clauses on the right of the consumer to withdrawal, withdrawal period and prohibition of advance payment during the withdrawal period in accordance with Art. 113. items 7 and 8 of this Law.

The inspector's decision

Article 149

If the inspector in charge establishes shortcomings referred to in Art. 148 of this Law, they will enact a decision determining the period in which the trader or the provider of goods is obliged to remove the established shortcoming.

If the trader or the service provider fails to remove the detected shortcoming in the period defined in the decision of the inspector, the inspector shall enact a decision on the temporary ban of sale of goods or provision of services until the

shortcomings over which the ban has been issued are removed.

Complaint

Article 150

A complaint can be submitted with the Minister in charge against the decision referred to in Art. 149. para. 1 and 2 within eight days.

The complaint from Paragraph 1, shall not postpone execution.

XV. PENALTY PROVISIONS

Article 151

A fine in the amount of RSD 300,000 – 2,000,000 shall be imposed on a legal entity for:

- 1) Failure to indicate price in accordance with Article 6 and 7 Paragraph 1, and Articles 8 to 12 of this law;
- 2) Failure to fulfil the requirements of Article 14 when advertising the selling price in the advertisement;
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- 3) Failure to issue a bill to the consumer in accordance with Article 15, or itemise billing for services of general economic interest in accordance with Article 91 of this law;
- 4) Failure to communicate the commercial purpose of providing the information referred to in Article 16 of this law;
- 5) Claiming to be a signatory to a code of conduct when the trader is not, against Article 23, Paragraph 1, item 1) of this law;
- 6) Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorization, against Article 23 Paragraph 1, item 2) of this law;
- 7) Claiming that a code of conduct has an endorsement from a public or other body which it does not have, against Article 23 Paragraph 1, item 3) of this law;
- 8) Claiming that a trader and their commercial practices, or a product, have been approved, endorsed or authorized by a public or private body when they have not, or making such claim without complying with the terms of the approval, endorsement or authorization, referred to in Article 23 Paragraph 1, item 4) of this law;
- 9) Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that they will not be able to offer for supply, or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising), against Article 23 Paragraph 1 item 5) of this law;
- 10) Making an invitation to purchase products at a specified price and then refusing to show the advertised item to consumers; or refusing to take orders for it or deliver it within a reasonable time; or demonstrating a defective sample of it, with the intention of promoting a different product (bait and switch), against Article 23 Paragraph 1 item 6) of this law;
- 11) Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice, against Article 23 Paragraph 1, item 7) of this law;
- 12) Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language which is not in official use in Republic of Serbia, and then making such service available only in another

language without clearly disclosing this to the consumer before the consumer is committed to the transaction, against Article 23 Paragraph 1, item 8) of this law;
13) Stating or otherwise creating the impression that a product can legally be sold when it cannot, against Article 23 Paragraph 1, item 9) of this law;
14) Presenting rights given to consumers in law as a distinctive feature of the trader's offer, against Article 23 Paragraph 1, item 10) of this law;
15) Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial), against Article 23 Paragraph 1, item 11) ;

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16) Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or their family if the consumer does not purchase the product, against Article 23 Paragraph 1, item 11) of this law;
17) Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not, against Article 23 Paragraph 1, item 12) of this law;
18) Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products, against Article 23 Paragraph 1, item 13) of this law;
19) Claiming that the trader is about to cease trading or move premises when they are not, against Article 23 Paragraph 1, item 14) of this law;
20) Claiming that products are able to facilitate winning in games of chance, against Article 23 Paragraph 1, item 15) of this law;
21) Falsely claiming that a product is able to cure illnesses, dysfunction or malformations, against Article 23 Paragraph 1, item 16) of this law;
22) Passing on materially inaccurate information on market conditions, or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions, against Article 23 Paragraph 1, item 17) of this law;
23) Claiming that announce award competition or promotional game without awarding the prizes described or a reasonable equivalent, against Article 23 Paragraph 1, item 18) of this law;
24) Describing a product as gratis, free, without charge or similar, if the consumer has to pay anything other than the unavoidable cost of answering an ad and collecting or paying for delivery of the item, against Article 23 Paragraph 1, item 19) of this law;
25) Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that they have already ordered the marketed product when they have not, against Article 23 Paragraph 1, item 20) of this law;
26) Falsely claiming or creating the impression that the trader is not acting for purposes relating to their trade, business, craft or profession, or falsely representing oneself as a consumer, against Article 23 Paragraph 1, item 21) of this law;
27) Creating the false impression that after-sales service in relation to a product is available in the Republic of Serbia, against Art. 23. para. 1, item 22) ;
28) Misusing the word "guarantee" against Article 57 and Article 23, Paragraph 1, item 23) of this law;

- 29) Creating the impression that the consumer cannot leave the premises until a contract is concluded, against Article 25 Paragraph 1, item 1) of this law;
- 30) Conducting personal visits to the consumer's home ignoring the consumer's request to leave or not to return, except in circumstances and to the extent legally justified to enforce a contractual obligation, against Article 25 Paragraph 1, item 2) of this law;
- 31) Making persistent and unwanted solicitations by telephone, fax, e-mail or other means of communication, except in circumstances and to the extent legally - 61 - justified to enforce a contractual obligation, against Article 25 Paragraph. 1, item 3) of this law;
- 32) Requiring a consumer who wishes to exercise a right under the insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising their contractual rights, against Article 25 Paragraph 1, item 4) of this law;
- 33) Including in an advertisement a direct exhortation to children to buy advertised products, or persuade their parents or other adults to buy advertised products for them, against Article 25 Paragraph 1, item 5) of this law;
- 34) Demanding payment for or the return or safekeeping of products supplied by the trader, but not solicited by the consumer, against Article 25 Paragraph 1, item 6) of this law;
- 35) Explicitly informing a consumer that if they do not buy the product or service, the trader's job or livelihood will be in jeopardy, against Article 25 Paragraph 1, item 7) of this law;
- 36) Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either there is no prize or other equivalent benefit, or taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost, against Article 25 Paragraph 1, item 8) of this law;
- 37) Selling, serving and giving the alcohol drinks and tobacco products to persons under 18 years of age, against Article 26 Paragraph 1 of this law;
- 38) Direct marketing contrary to Article 41 Paragraph 1 of this law ;
- 39) Failure to inform the consumer on the commercial nature of the communication in accordance with Article 41, Paragraph 2 of this law;
- 40) Delivery of goods or services to the consumer without their being ordered by the consumer beforehand, against Article 42 Paragraph 1 of this law;
- 41) Advertising, using the means of distance communication, in a manner contrary to any of the requirements of Article 43 of this law ;
- 42) Failure to respond in writing within 15 days from the date of reception of the complaint and failure to inform the consumer on a possible on a proposal for its resolving, in accordance with Article 58 Paragraph 2 of this law;
- 43) Disconnecting a consumer from the network or denial of services of general economic interest, contrary to Article 86 of this law;
- 44) Failure to install help-line in accordance with Article 92 of this law;
- 45) Advertising or offering for sale package tour contrary to Article 95 of this law;
- 46) Failure to inform the consumer, 14 days prior to departure of the name, address and telephone number of the host family, and of the name, address and telephone number of a person responsible at the place of stay whose assistance may also be demanded while staying abroad, against Article 101 Paragraph 3 of this law;

47) Failure to provide evidence of security for the refund of the paid price for package tour contracts and timesharing contracts in accordance with Article 108, Paragraph 1 and Article 122 of this law;

48) Advertising or offering timeshare, long-term holiday product, resale or exchange contract against Article 113 of this law;

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49) In addition to contractual provisions on the withdrawal right, duration of that right and prohibition of advance payment during the withdrawal period not being signed by the consumer, against Article 113 Paragraph 6 of this law.

50) Reception of non-refundable aid in capacity of an organisation or association under Art. 127, from traders or associations of traders, save for the service with a fee, against Article 131 of this law.

A fine in the amount of RSD 50,000.00 – 150,000.00 shall be imposed on a natural entity, or a responsible person in a legal entity for acts referred to in Paragraph 1 of this article.

A fine in the amount of RSD 50,000.00 – 500,000 shall be imposed on an entrepreneur for acts under Paragraph 1 of this article.

Article 152

Beside the fine under Article 151 Paragraph 1, a legal entity can be imposed a temporary ban of performing certain activity for the period of six months to one year, as well as the relief of publication of the decision.

Beside the fine under Article 151 Paragraph 2, a responsible person in a legal entity can be imposed a temporary ban of performing certain activities, for a period from three months to one year.

Beside the fine under Article 151 Paragraph 3, an entrepreneur can be imposed a temporary ban of performing certain activities, for a period from six months to one year.

XVI. TRANSITIONAL AND FINAL PROVISIONS

Article 153

By-laws passed with authorisation defined in this law shall be passed within six months after coming into force of this law.

Article 154

On the day of beginning of implementation of this law, the Law on Consumer Protection („Official Gazette of the Republic of Serbia”, No. 79/05) and the Law on Liability of Producers of Defective Products („Official Gazette of the Republic of Serbia”, No. 101/05) shall become ineffective.

Article 155

This law comes into force on the eighth day after its publication in the „Official Gazette of the Republic of Serbia”, and will be implemented from January 1, 2011.