

Policy brief

The system of consumer rights protection in Montenegro - how to reach the European level of consumer rights protection in Montenegro?





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Policy brief “The system of consumer rights protection in Montenegro - how to reach the European level of consumer rights protection in Montenegro?”



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Contents

1. Consumer protection – origins and development.....	6
1.1. Origins and development of consumer protection.....	6
1.2. History of consumer protection in Montenegro	8
2. Legal framework for consumer protection in Montenegro	10
2.1. Constitution of Montenegro	10
2.2. Law on Consumer Protection	11
2.3. Strategic framework for consumer rights protection in Montenegro – Consumer National Programmes and Action Plans (2012-2015; 2015-2018) and other relevant regulations	14
3. Institutional framework for consumer protection in Montenegro.....	23
3.1. Ministry of Economy, Directorate for Development of National Brand and Consumer Protection and Consumer Protection Council	23
3.2. Administrative and legal and out-of-court protection	24
3.3. Commission for monitoring the implementation of the National Consumer Protection Program	26
3.4. Negotiating framework with the EU in the area of consumer protection – Chapter 28	26
3.5. Penal policy in the field of consumer rights protection	27
3.6. Civil sector and consumer policies in Montenegro	28
4. Consumer protection in the European Union	28
4.1. Origins and development of protection in the European law.....	28
4.2. Sources of consumer protection law in the European Union	34
4.3. Institutional models of consumer protection in the European Union member states.....	36
5. Comparative analysis	36
5.1. Consumer protection in Serbia	36
5.2. Consumer protection in the Republic of Croatia	38
5.3. Consumer protection in Germany	43

6. Analysis of the consumer rights protection in Montenegro.....	48
6.1. Compliance of Montenegrin regulations and policies with European Union regulations.....	49
6.2. Consumer protection and activities of Montenegrin courts (comparative analysis with European case law) and individual and/or collective lawsuits	50
6.3. Consumer protection in Montenegro: where are we at?	51
6.3.1. Trade.....	53
6.3.2. Consumer protection and electronic commerce.....	55
6.3.3. Public services (energy production, telecommunications and postal services; utility services)	57
6.3.4. Food safety	63
6.3.5. Educating and informing consumers	67
6.3.6. Banking and financial services	69
6.3.7. Out-of-court settlement of consumer disputes	71
6.3.8. Can Montenegrin consumer be considered responsible?.....	74
7. Conclusions and recommendations for improving the protection of consumers in Montenegro - how to reach the European level of consumer rights protection in Montenegro?.....	78
LITERATURE.....	88
A. BOOKS:.....	88
B. ARTICLES.....	88
About the project – Improving capacities of CSOs and the system of consumer protection in Montenegro	90

INTRODUCTION

Consumer protection is one of the more recent rights and a product of the modern times. It had particularly modest roots in the Montenegrin legal system. However, the development of the market economy, the expansion of the European Union and the increasing influence that big and powerful companies had on the development of the world, helped create the need to protect the most vulnerable ones – individuals, i.e. consumers.

For this reason, the Centre for Consumer Protection in Montenegro (CEZAP), in cooperation with its partners: the Centre for Monitoring and Research CeMI, the Montenegrin LGBTQ Association (Queer Montenegro) and the Network for the Affirmation of European Integration Process (MAEIP), initiated and implemented the project titled *Improving capacities of CSOs' and the system of consumer protection in MNE „PROTECT.ME“*. The project is funded by the European Union through the Instrument for Pre-Accession Assistance (IPA). It has contributed to the European integration process through the strengthening of the civil sector that actively participates in social development by creating policies in the project implementation process. The project activities were aimed at providing support for the protection of consumer rights, raising awareness of consumers and business sector members of their rights and obligations, as well as strengthening the participation of state and local government structures and the very citizens in creating an appropriate consumer protection system.

This study resulted from the research conducted during the project's implementation. It contains the most important segments of consumer protection in the European Union and Montenegro, a comparative analysis of these legal regulations, as well as the state of consumer protection in Montenegro.

CeMi and its partners wanted to make a modest contribution with this text to raising the level of knowledge about consumer rights today, and to help Montenegro with its recommendations and conclusions for raising standards pertaining to consumer rights protection.

In this regard, we are especially highlighting the conclusions and recommendations that represent a rather well-intentioned and objective opinion of the author of this study created with the aim of overcoming the existing faults and aspiring to improve the protection of these highly significant rights.

1. Consumer protection – origins and development

1.1. Origins and development of consumer protection

The first provisions protecting consumers' interests appeared at the end of the XIX and the first half of the XX century, as a part of regulations of some of the more developed European countries, such as the German law of 1894 obliging the seller to refund all payment instalments in cases of a breach of contract, or the 1935 Dutch Trade Law relating to product safety and consumer health.¹

The incident which occurred in the meat industry in the USA in 1905 triggered the fierce reaction of consumers who started demanding increased control, which resulted in the adoption of the Meat Control Act and the establishment of the Agency for Control and Labelling of Drugs and Food and the Federal Trade Commission.

Consumer protection, as an organized movement of citizens, the so-called **consumerism**, emerged as a reaction to the problems faced by consumers, including: unsafe products, inadequate services and repairs, lack of regard and resolution of their complaints and request for returns, inaccurate product labelling, misuse of advertising especially targeting children, false consumer information, misleading trade practices, etc. The only way for an individual consumer who has little impact on their own to address an imbalance of power with the powerful legal entities is to join forces with other consumers and organize.

Consumers started demanding the protection of their rights in relation to producers and intermediaries: the right to information, protection of health, freedom of choosing products, and safety of the consumption of products and services.

The right to protect consumers begins to develop during the 1960s in the countries with a developed market economy². As stated, this process was initially more intense in the United States, where consumers were more organized. As a result, a number of consumer protection acts were adopted in the 1960s, including Decision on Putting Visible Warning Labels on Smoking Damage

1 Marko Babić, Zaštita potrošača i izvori trgovačkog prava, Poslovna izvrsnost, Vol. 9 No. 1, 2015, p. 2

2 Maja Stanivuković, Ugovori sa potrošačima sa inostranim elementom – merodavno pravo i nadležnost, Zbornik radova „Dvadeset godina Zakona o međunarodnom privatnom pravu“ (urednik prof. dr Mirko Živković) Pravni fakultet Niš, 2004. godine, str. 251.

to Cigarette Packs (1965), Decisions on Fair Package and Product Labelling to Prevent Falsely Labelling of Products (1966), Decision on Child Protection Allowing the Federal Trade Commission to Withdraw Products Dangerous for Children from the Market (1966), and Decision on fair money lending that was supposed to regulate consumer credits (1968). Also, in 1962, the Declaration of Basic Consumer Rights, the so-called Kennedy's declaration, was adopted. Specialized agencies and commissions have also been formed to protect the interests of consumers. However, the most important step forward in consumer protection is the adoption of Consumer Bill of Rights by the US Congress in 1972. This legal act proclaims four basic consumer rights: *the right to safety, the right to be informed, the right to choose, and the right to be heard*. In accordance with this Bill, the Federal Trade Commission (FTC) responsible for consumer protection was established in the United States. The value of consumption by the individuals might be small, but combined together they present a significant value for the society. In literature, the main stated aims of the rules protecting consumers are the protection of the party which is weaker in the legal process – with regard to the criteria of economic power, knowledge and experience and information available. The principle of freedom of contracting between the parties involved of equal negotiating strength has to give way to the principle of social justice when one of the contracting parties is disproportionately weaker than the other³. The consumer, as a weaker party, should be protected from unfair business conduct and misuse of the negotiating power of the other party in a legal process, for which the proposed name in international literature is “professional”, and who we locally usually call “a trader”⁴.

The extraction and systematization of rules protecting consumers in a separate legal area are relatively new, but the roots of consumer protection go much further into the past. Even in Roman law we find provisions on protecting buyers against the hidden faults of their shopping, and *Magna Carta Libertatum*, in addition to the well-known provisions on limiting the absolute power of rulers, contains provisions on uniform measures for wine, beer, corn and materials.⁵

The consumer protection law is multidisciplinary within the legal science. Undoubtedly, consumer protection is a form of state intervention in private legal relations, but this intervention is manifested in legal norms that by their nature belong to different legal branches. The majority belongs to contractual relations (contract law and non-contractual liability) and one part is included in the scope of administrative and criminal law. A special segment of the civil

3 *Ibidem*.

4 Article 2 of the Law on Consumer Protection

5 Peter Cartwright, Consumer Protection in Financial Services, Kluwer Law International, 1999, p. 1.

procedural law (e.g. on collective lawsuits, provisional measures, execution of decisions, etc.) and international private law are also a significant element.

In the law of contract, protection is ensured by imposing certain obligations on the trader with regard to the method of concluding a contract, and in particular to informing the consumer, prescribing the nullity of some contractual clauses, granting the right to consumers to terminate the contract within a specified time limit, etc.

There is also the possibility to protect consumers through international private law. Along with the development of a new legal discipline in the developed market economies, collision norms on international jurisdiction protecting consumers have been developed in relation to consumer contracts. International private law norms are used as a consumer protection tool in Europe, and considerably less in Canada and the United States.⁶ Therefore, we will limit our presentation of comparative legislation to relevant international legal sources and regulations of the European Union and EFTA, but also to the practice of the European Court of Human Rights.

Consumer law has even been included in the highest human rights act of the European Union - the EU Charter of Fundamental Rights emphasizing that the Union's policies must ensure a high level of consumer protection. In its latest program on further development of consumer protection rights for the period 2014-2020, the European Union highlights the need for further development of consumer protection with the aim of creating a powerful and capable consumer as a key actor in the single market.

1.2. History of consumer protection in Montenegro

Initially, consumer protection in Montenegro did not differ from consumer protection in other republics of the FPRY, and later the SFRY. Until the appearance of the Constitution of the SFRY and the Law on Associated Labour in 1974, there was almost no interest in the field of consumer protection among Yugoslav authors (neither lawyers nor economists) of that time.⁷ In a short bibliographic review of papers in the field of consumer protection, Nevenko Misita (1990) lists only three papers by two authors in the period up to 1974.⁸

The first forms of consumer protection occur at the time of rational methods

6 Stanivuković, op. cit. p. 253.

7 Advija Kulović, Zaštita potrošača u Bosni i Hercegovini – tradicija i pojmovi, Tranzicija, Vol. 12., p. 2

8 *Ibidem*.

of state-run distribution of goods, immediately after the Second World War, carried out via inspectors who had responsibilities to prevent unfair producers' practices against the consumers⁹.

The first forms of organized consumer protection in Yugoslavia were consumer councils. They were formed in 1955 as a reaction to the unplanned economic functioning of trade that was completely incompatible with the social character of intermediaries between producers and consumers. Their primary task was to improve trade and effective measures for better supply of cities and industrial centres. However, the very establishment of consumer councils did not significantly contribute to improving supply, but despite its inefficiency, they were legally valid until the adoption of the 1974 Constitution.

Regarding the legislation, consumer protection relied on the Law on Foreign Trade of Goods and Services in order to combat unfair competition, and the Law on Regulation of Business Relationships in the Market.

The 1974 Constitution of the SFRY established an institutional basis for the organization of consumers in local communities, self-management interest communities, municipalities, etc. The SFRY Constitution also stipulates that organizations of associated labour dealing with the trade of services and goods for direct consumption must cooperate with consumers organized on self-management principles. Consumer protection had a general shape and it was supposed to provide consumers with the following rights:

- the right to safety when purchasing goods from retailers;
- the right to protection of basic interests (health, achievement of economic goal, compensation of damage, information, etc.);
- the right to organize into certain associations and structures, which enable them to effectively secure their interests in accordance with the basic principles of the socialist and self-managing socio-economic system.

Consumer protection was regulated in more details in legal texts (Law on Associated Labour, Basic Law on Trade of Goods, Law on the Basis of Price System and Social Price Control, Law on Contractual Relations, etc).

All these legal regulations had a modest effect in the field of consumer rights protection, which is why this protection is primarily linked to the efforts to bring this legal and economic activity closer to the EU legislation. That is how the Law on Consumer Protection (Official Gazette of Montenegro 28/07) was adopted in Montenegro. It was applied until 2014, when the implementation of the new **Law on Consumer Protection** (Official Gazette of Montenegro 002/14, 006/14, 043/15, 070/17) began.

9 *Ibidem.*

2. Legal framework for consumer protection in Montenegro

On its path towards the European Union, Montenegro is obliged to align its law with the EU standards. This is particularly necessary in the field of consumer rights protection. Time is required to achieve this aim.

The legal framework for consumer protection in Montenegro is based primarily on the Constitution of Montenegro (Official Gazette of Montenegro 1/07), legal texts and international agreements.

Apart from the aforementioned basic Law on Consumer Protection, consumer rights are also regulated by a series of other laws. The crucial ones are:

- Law on Contractual Relations,
- Law on Consumer Credits,
- Law on Conversion of Loans in Swiss Francs,
- Law on Local Self-Government,
- Law on International Private Law,
- Law on Internal Trade,
- Law on Electronic Commerce,
- Law on Electronic Communications,
- Law on Electronic Media,
- Law on Energy Production,
- Law on Technical requirements for Products and Conformity Assessment,
- Law on Standardization,
- Law on Metrology,
- Law on Accreditation,
- Law on Food Safety,
- Law on Contractual and Property Relations in Civil Aviation,
- Law on Contractual Relations in Railway Transport,
- Zakon o lokalnoj samoupravi i dr.

2.1. Constitution of Montenegro

Article 70 of the Constitution of Montenegro (Official Gazette of Montenegro 1/07) prescribes the obligation to protect consumers. According to this provision, the state is also obliged to ensure protection from the activities damaging

consumers' health, safety and privacy. Thus, our supreme legal act establishes the constitutional obligation of state authorities, recognizing thereby consumer protection as a special policy in the Montenegrin legal system.

2.2. Law on Consumer Protection

Consumer protection is regulated above all by the Law on Consumer Protection (Official Gazette of Montenegro 002/14, 006/14, 043/15, 070/17), which is systemic for this area. It defines the basic rights of consumers when purchasing goods and service, manner of exercising and procedure of consumer rights protection.

Some consumer rights in certain areas are subject to the **provisions of other sectoral laws**. For example, the Law on Contractual Relations is applied on the contractual and legal relations of consumers and traders that are not regulated by the Law on Consumer Protection.

Unlike the provisions of the Law on Contractual Relations in the field of contract law which have a dispositive character, i.e. are valid if the contracting parties do not agree differently, the implementation of provisions of the Law on Consumer Protection present a legal imperative. For example, the rules of the Law on Contractual Relations Relating to Travel are rather dispositive, while the rules of the Law on Consumer Protection which guarantee certain rights to the consumer when concluding a contract in tourism are imperative.

The prescribed consumer rights are at the same time the obligations of traders, and relate to the provision of the right to safety of life, health and economic rights to consumers in the trade of goods and services. To this end, this law also contains provisions on the obligation of traders to provide information to consumers.

Within the meaning of this Law, a consumer is a natural person who enters a legally binding activity or appears in the market as an actor carrying out activities not in line with their profession or field of work¹⁰.

Within the meaning of this Law, a trader is a person who enters a legally binding activity or appears in the market as an actor carrying out activities in line with their profession or field of work.¹¹ The product is goods or services, including immovable properties, rights and obligations.¹²

10 Article 2 of the Law on Consumer Protection.

11 Article 3 of the Law on Consumer Protection.

12 Article 6 of the Law on Consumer Protection.

It is prohibited to sell unsafe products, as well as products which are unhygienic and harmful to people's health. It is forbidden to give consumers' personal data to the third parties, without prior consent of the consumer, unless otherwise provided by law.

The law prescribes other rights, conditions and methods of informing consumers about: the use of public services; the content of the consumer credit agreement and the mandatory notification thereof; the particularities of distance sales, as well as off-premises sales (mandatory prior notification and confirmation of prior notification, the right of consumers to unilaterally terminate the contract and the consequences of termination, etc.); timesharing/contract on the right to time-limited use of immovable property and its particularities (form and content of the contract, obligatory prior notification, consumer's right to unilateral termination of the contract and consequences of termination, etc.)

Unfair terms in consumer contracts are provisions that have not been negotiated individually (drafted in advance by the trader), and the consumer has therefore not been able to influence their substance, particularly when it comes to pre-formulated (standard) contracts, and which, contrary to the principle of conscientiousness and honesty, result in imbalance of rights and obligations to the detriment of consumers.¹³

Unfair terms in consumer contracts are null.

Among others, those are particularly the terms which:

- exclude or limit responsibility of the trader in cases of consumer's death or injury caused by activities that the trader performed or failed to perform,
- exclude or limit responsibility of the consumer in cases the trader totally or partially failed to fulfil contract obligations,
- contract the optional right of the trader regarding the execution of the contracted service, and oblige the consumer to fulfil the contracted obligation,
- determine the right of the trader to withhold the funds paid by the consumer who has given up the conclusion or execution of the contract, where the same right has not been established for the consumer if the trader withdraws from the conclusion or execution of the contract,
- oblige the consumer to pay a disproportionately high penalty in relation to actual damage in case of failure to perform the contracted obligation, etc.

¹³ Article 102 of the Law on Consumer Protection.

Prohibited trader behaviors are in particular:

- providing inaccurate, incomplete, unclear and ambiguous product information or sales conditions that mislead consumers when purchasing products,
- conditioning the sale of products by selling other products,
- declaring that the product can only be procured in a short period of time in order to provoke a consumer's rushed decision,
- persuading consumers that illegal sales of products are legal,
- persuading the consumer that their own safety and the safety of their family is jeopardized if they do not purchase the offered product,
- establishing, operating or promoting a pyramidal promotional network within which the consumer pays for the possibility of earning, which primarily depends on the introduction of other consumers into the network, rather than on the sale or consumption of products,
- using the term liquidation sale, i.e. total sale or similar labels when a trader is not likely to stop operating,
- behaving aggressively (selling products using coercion, threats and harassment of consumers, hindering the freedom of choice of consumers, in particular: prohibiting the consumer from leaving the premises or making the consumer believe that they can not leave the business premises before signing the contract or paying; frequent visits to the household in spite of consumers' resistance; offering products to consumers by phone, fax, e-mail or in a similar manner without the consent of the consumer; requiring consumers to provide documents that are not relevant to the execution of a claim based on the insurance policy in order to force consumers to withdraw from fulfillment of contractual rights; demand for payment of products delivered without consumer's consent). It is forbidden to publish advertising which are misleading, promote discrimination and violence, and encourage behavior harmful to consumer safety or environment. An advertisement pointing to a phone number subject to a special tariff must include the amount of that tariff, and if the commercial is in the form of a video, the amount of the tariff must be visible during the entire broadcast of the record.

A noticeable and clear warning of the risks arising from the regular and improper use or use by a particular group of consumers, as well as a warning on hazardous substances and mixtures, must be displayed on the goods. A service warning must be displayed at the place of the offer. Product descriptions and labels must be written in a language that is in official use in Montenegro. Conditions and manner of informing the consumers about: the content of the contract and the mandatory notification in relation thereto; the specifics of sales (mandatory prior notification and confirmation of prior notification,

consumer right to unilateral termination of the contract and consequences of termination, etc.); contract on the right to temporary use of immovable property and its particularities (the form and content of the contract, mandatory prior notification, the right of the consumer to unilaterally terminate the contract and the consequences of termination, etc.) and other provisions not individually negotiated (pre-formulated by the trader, where the consumer did not have any influence on their contents, especially in the case of the provisions of the pre-formulated (standard) contract) and which, contrary to the principle of conscientiousness and fairness, cause imbalance of rights and obligations to the detriment of consumers.

Contractual provisions which are not negotiated individually and offered to the consumer in writing must be clear, i.e. understandable to the consumer, in a language that is in official use in Montenegro. Otherwise, they will be interpreted in terms more favourable for the consumer.

If the trader claims that the pre-formulated contract term was negotiated with the consumer, the burden of proving that fact falls on the trader.

2.3. Strategic framework for consumer rights protection in Montenegro – Consumer National Programmes and Action Plans (2012-2015; 2015-2018) and other relevant regulations

The Ministry of Economy of Montenegro, which is responsible for consumer protection, proposes periodic national consumer protection programs to the Government of Montenegro, with the action plans for their implementation. So far, four national consumer protection programs have been adopted: the first National Consumer Protection Program for the period 2008-2010, adopted in 2008, the second National Consumer Protection Program for the period 2010-2012, adopted in 2010, the third National Consumer Protection Program for the period 2012-2015, adopted in 2012 and the fourth National Consumer Protection Program for the period 2015 - 2018, adopted in 2015. These national programs contain an analysis of the situation in this area, as well as concrete measures and standards that are to be achieved, while annual action plans define the activities, those responsible for carrying them out and their implementation timescales. The Programs are dominantly oriented towards the realization of consumer protection in accordance with the Law on Consumer Protection, further improvement of the legal system of consumer protection, including institutional conditions for establishing a unified system of consumer protection at all levels and strengthening cooperation between the entities involved

in the protection system, as well as cooperation with consumer organizations, improvement of the consumers protection in certain areas, and education and provision of information to consumers.¹⁴ In addition to these programs, the Commissions for monitoring the implementation of the National Consumer Protection Programs were established. They consisted of representatives of the ministries, the non-governmental sector dealing with consumer protection and the economy associations, as well as local self-governments. For example, the Commission for monitoring the implementation of the Third National Consumer Protection Program for the period 2012-2015 was in charge of:

- coordinating and monitoring implementation of the activities included in the Action Plan, which is an integral part of the National Consumer Protection Program and, accordingly, proposing and taking the necessary measures to improve the level of consumer protection in all areas;
- preparing annual reports on the implementation of the National Program Action Plan proposed by the Ministry of Economy of Montenegro, within the specified deadline.¹⁵

The latest National Consumer Protection Program was adopted in 2015 and it covers the period from 2015 to 2018. This program represents an effort to define a comprehensive document that systematically deals with consumer protection issues in Montenegro and, accordingly, defines priorities and measures for their implementation. The main objective of this National Program is to raise awareness about consumer rights and strengthen the role of consumers in the common market. Also, this program is aimed at further stimulating the strengthening consumer rights in different areas and their active role in the market. According to the Program, a prerequisite for improving this area is “further harmonization of consumer legislation with the EU law, strengthening consumer protection against unfair commercial practices and dangerous products by establishing more effective market surveillance and providing adequate support to business in the appropriate application of new legislation”.¹⁶

The program particularly highlights the need for more intensive protection of vulnerable groups and product safety, advertising, improving the quality of telecommunications, financial and public services, and the need to ensure easy access to information for consumers, in particular in managing complaints and expert advice.¹⁷

14 Administration for Inspection Affairs, Market Inspection, work of the Commission for monitoring the implementation of the National Consumer Protection Programme. More information available on: http://www.ti.gov.me/linkovi/nacionalniprogram?alphabet=lat_pristupljeno 5 November 2017.

15 *Ibidem*.

16 National Consumer Protection Programme 2015 - 2018, p. 19.

17 *Ibidem*, p. 19.

It is especially important to point out that the National Consumer Protection Program lists the priorities of the Chamber of Economy of Montenegro in order to promote and strengthen the consumer protection, in accordance with the Law on Consumer Protection and other laws that contain provisions on the protection of consumer rights, including:

- Recording and monitoring consumer disputes in the out-of-court procedure;
- Improving the information system for monitoring consumer complaints;
- Educating members of the Committee for out-of-court settlement of consumer disputes and affirming the role of the Committee (introducing the possibilities to consumers and businessmen to resolve disputes out of court).¹⁸

Also, this Program envisages that, in order to improve the protection of consumers in certain areas, the Chamber of Economy of Montenegro will continuously carry out activities aimed at raising the level of awareness of food safety through the education of food producers and traders.¹⁹

When it comes to **improving the consumer protection in certain areas**, the National Plan specifies the activities that must be undertaken in the field of food safety, trade, electronic commerce, tourism and hospitality industry, public services, health, energy production, telecommunications and postal services, utilities, housing, financial and banking services, and finally educating and informing consumers.

When it comes to **food safety**, the National Program points out the importance of developing the national food safety system for protecting the health and safety of consumers. It also highlights the need for further harmonization of Montenegrin legislation in order to define the legal framework for full transposition and harmonization with EU regulations on food safety, especially when it comes to placing of food and animal feed, food safety rules regarding information on the food that must be available to the consumer, food labeling, additives, enzymes, substances which come into contacts with food, fast frozen food, new foods, etc. with regard to the implementation of food safety regulations, the role of the competent inspections of the Administration for Inspection Affairs which continuously monitors the implementation of regulations governing food safety.²⁰

When it comes to **trade**, the National Program emphasizes the need to initiate amendments to the Law on Consumer Protection and the Law on the Prohibition

18 *Ibidem*, p. 20.

19 *Ibidem*, p. 20.

20 *Ibidem*, p. 23.

of Misleading and Comparative Advertising, in line with the EU Directive on Consumer Rights, which will improve the position of consumers through the introduction of a unit cost, legal guarantee, abolishing unfair conditions etc.²¹

In the area of **e-commerce**, the National Program envisages the education of Montenegrin consumers about the importance and character of online shopping, as well as the possibilities to fully apply all forms of on-line shopping in the real life of consumers, in order to make them feel the benefits of e-commerce. In that sense, it is important to inform the business sector about new e-commerce obligations, and provide consumers with information on safe on-line shopping. This includes information on indicators for identifying a reliable trader or fraud, secure payment methods, and security rules that must be respected.²²

In the field of **tourism and hospitality industry** it is stipulated that service providers shall keep a Complaint Book, certified by the competent local government authority, in which dissatisfied service users can register their complaints about the requested or received service, and the service providers are obliged to resolve the complaint within three days, and submit a copy to the tourist inspection. In accordance with the current National Consumer Protection Program, service providers in tourism including excursions and tourist package arrangements are obliged to keep a complaint book and resolve the complaints of dissatisfied users of services within the specified timescales.²³

When it comes to **public services**, the National Program aims to achieve the best possible conditions for consumers in public transport, utility services and energy supply. This implies adequate and transparent prices, good quality of services, user-friendly information, including the provision of advice in the field of services.²⁴

Health care activities will continuously focus on improving the quality of health services and patients' rights.²⁵

Safe energy supply at affordable prices and under fair conditions, as well as efficient use of energy, are key targets in the **energy production sector**. Also, one of the recommendations of the Energy Development Strategy until 2030 is the provision of social protection for endangered electricity consumers.

When it comes to **telecommunications and postal services**, the National Program is aimed at improving the quality of public electronic communication services, monitoring the quality parameters of all services and publishing

21 *Ibidem*, p. 23.

22 *Ibidem*, p. 24.

23 *Ibidem*, p. 24.

24 *Ibidem*, p. 26.

25 *Ibidem*, p. 26.

comparative data on measurements. The program also highlights the provision of complete information to consumers on the prices and tariffs of electronic communications services and changes in the offers and prices of the services of electronic communications operators, as well as prevention of operators' activities aimed at introducing the services for which the legal requirements have not been met in terms of informing the users about the service content, price and changing conditions for providing services. Also, the National Program emphasizes the need for organizing continuous education of users of electronic communications services in order to improve their knowledge about their rights in the field of electronic communications services (for example, the right to access services, spending restriction, unilateral termination of the contract, bill for services provided etc).²⁶

Several measures are planned to improve **utility services**. One of the most important is the adoption of local waste management plans and waste management plans for waste producers by local self-government bodies and waste producers, in accordance with the Law on Waste Management and the National Waste Management Plan. A number of measures also relate to the achievement of the objectives of the Law on Waste Management related to recycling and reuse, as well as improving inspection control, especially at the local level. When it comes to the legislation, the National Consumer Protection Program emphasizes the need for adopting the new Law on Utility Services, as well as the relevant bylaws, which will regulate the relations between municipalities and utility service providers, on the one hand, and users of services, on the other hand. In addition, the Program identifies the need for a complete transposition of the EU Directive 91/271/EEC, concerning urban waste water treatment, which is why the Ministry of Sustainable Development and Tourism should draft the Law on Urban Waste Water Management.²⁷

Activities in the field of **housing** are aimed at implementing the Law on Social Housing, the Law on Housing and Maintenance of Residential Buildings and the adoption of the Law on the Legalization of Informal Structures.

When it comes to **finance, banking and other financial services**, the National Program states that consumer protection policy needs constant improvements in order to enable consumers to exercise basic rights pertaining to information, the protection of economic interests and the efficient resolution of consumer disputes. The Program also points out that, besides sanctioning violations of consumer rights, it is necessary to act preventively, through the Central Bank of Montenegro's enhanced supervision by direct control of the creditors' operations

²⁶ *Ibidem*, p. 27 - 28.

²⁷ *Ibidem*, p. 28 .29.

in order to ensure a high level of consumer protection. The goal of improving this area is to create a quality institutional and regulatory framework that, with a satisfactory level of information, will result in financially literate consumers who make economically justified decisions.²⁸

When it comes to **educating and informing consumers**, the National Program defines the need to create regional consultations for directors and professional associates, and develop professional development programs for directors, teachers and expert associates.²⁹ At the same time, the Program contains provisions aimed at obliging institutions and organizations dealing with market surveillance and consumer protection to prepare and implement a wide range of activities to raise public awareness of citizens.³⁰

In addition to the National Consumer Protection Program 2015-2018, the Annual Action Plan has been adopted for the period July 2015 - June 2016. This Action Plan contains specific activities, those in charge of their implementation and timescales for their implementation, as follows: 1. Consumer protection in accordance with the Law on Consumer Protection and further improvement of the legal system of consumer protection; 2. Enhancement of consumer protection in certain areas, as well as education and provision of information to consumers.

Regarding the exercise of **consumer protection in accordance with the Law on Consumer Protection and further improvement of the legal system of consumer protection**, the activities are divided into seven following parts:

- Supervision of the implementation of the Law on Consumer Protection and other laws that contain consumer protection provisions - two activities;
- Recording and overseeing consumer complaints - five activities;
- Harmonization of legislation - two activities;
- Improvement of the institutional conditions for establishing a unified system of consumer protection at all levels and strengthening cooperation between entities involved in the system of consumer protection - seven activities;
- Cooperation with others responsible for consumer protection - four activities;
- Further support for out-of-court settlement of consumer disputes - one activity;
- Cooperation and further improvement of the conditions for strengthening

28 *Ibidem*, p. 32.

29 *Ibidem*, p. 33 - 34.

30 *Ibidem*, p. 34.

and more efficient functioning of consumer protection organizations (NGOs) - five activities.³¹

When it comes to activities in the field of **improving consumer protection in certain areas**, they include the following categories:

- Product safety - 14 activities;
- Food safety - 13 activities;
- Trade and e-commerce - 9 activities;
- Tourism and hospitality - 22 activities;
- Public services (health care services, energy production, telecommunication and postal services, utility services, housing, protection of passengers' rights in transport) - 10 activities;
- Protection of consumer rights regarding the explosives for civilian use and pyrotechnics - 81 activities;
- Financial services (banking and other financial services, insurance services) - 12 activities.³²

The section of the Action Plan pertaining to **Educating and Informing Consumers** encompasses the following categories:

- Education (counselling, education, research, literature) - 6 activities;
- Informing consumers - 4 activities;
- Revision of the regulations governing consumer protection - 2 activities.³³

When it comes to the strategic framework for consumer protection in Montenegro, it is important to note that, in addition to the national consumer protection programs, Montenegro adopted a **Market Surveillance Strategy**. It was developed in accordance with the EU Guidelines on Best Practice Techniques in Market Surveillance, which was developed within the framework of the European EMARS (*Enhancing Market Surveillance through Best Practice*) project. The Montenegrin Market Surveillance Strategy is based on the need to create an effective market surveillance system and envisages activities aimed at further developing of the market surveillance and promoting mutual cooperation between market surveillance bodies and bodies authorized for assessing product conformity.³⁴ The adoption of the Strategy is also foreseen by the National Consumer Protection Program. Ensuring conditions for efficient consumer protection is one of the goals of the Strategy.

31 National Consumer Protection Programme 2015 -2018, p. 36 - 39.

32 *Ibidem*, p. 39 - 57.

33 *Ibidem*, p. 57 - 58.

34 Government of Montenegro, Market Surveillance Strategy of Montenegro, Podgorica 2009, p. 2.

In order to monitor the implementation of this Strategy, a **Coordination Body for Market Surveillance** was established with the aim of strengthening consumer protection in the area of product safety.³⁵ The Coordination Body for Market Surveillance was set up by the Government of Montenegro in September 2010³⁶, while the annual report on the work of the Coordinating Body is available on the website of the Administration for Inspection Affairs.³⁷ The coordination body includes representatives of the market surveillance authorities, i.e. inspections, which supervise the safety or the conformity of non-food products on the market for the purpose of adequate protection of the public interest (e.g. health and safety, environmental protection, consumer protection); inspections that are recognized as crucial for the control of certain groups of introduced non-food products and which may provide market surveillance authorities with information on identified safety problems on products in use, in order to be able to intervene in the market; Customs Administration, whose task is to control these products when importing; and finally, the Department for Quality Infrastructure, as the organizational unit of the Ministry of Economy, which monitors the state and development of the quality infrastructure entities.³⁸

The creation of such a Coordination Team resulted from the fact that market surveillance in Montenegro is carried out by several inspections, which function within various administration bodies and ministries. For that reason, it is necessary to have a common coordination body.³⁹

When it comes to strategic documents at the level of **local self-government**, it implements the consumer protection policy at the local level in accordance with the law and the **Plan of activities on raising the level of consumer protection in local self-government units**. It also oversees the implementation of regulations under its jurisdiction through its inspections. Competencies and activities of local self-governments are defined by annual plans of activities on raising the level of consumer protection in local self-government units. Thus, for example, in the Plan of activities for raising the level of consumer protection in

35 Government of Montenegro, Negotiating Position of Montenegro for Intergovernmental Conference on Montenegro's Accession to the European Union for Chapter 28 - Consumer and Health Protection, Podgorica, July 2014

36 Decision on establishing Coordination Body for Market Surveillance, (Official Gazette of MNE, 66/10).

37 Official website of the Administration for Inspection Affairs: <http://www.ti.gov.me/biblioteka/izvjestaji>

38 Decision on establishing Coordination Body for Market Surveillance, (Official Gazette of MNE, 66/10)

39 A review of the activities and sessions of the Coordination Body for Market Surveillance can be found on the website of the Administration for Inspection Affairs: <http://www.ti.gov.me/vodici/107141/Aktivnosti-Koordinacionog-tijela-za-trzisni-nadzor.html>, Accessed: November 30, 2017

the local self-government units from 2016, it is stated that, in order to improve the services in the field of consumer protection and citizen information, the local self-governments adopted Guidelines for free access to information. It informs the users of the services in a concise manner about the competencies of local government bodies and departments, the way in which they can exercise their rights, as well as the contacts for communicating with them. This document states that the Guidelines are located on the websites of local governments. Furthermore, contact persons for communication with citizens have been identified, and working hours for the reception of parties defined in all bodies and departments dealing with citizens' rights and obligations. At the same time, civil offices were established - places for communication with citizens, where citizens can be informed about the status of their request.⁴⁰

The Action Plan also contains provisions regarding the establishment and functioning of the consumer advice and protection offices. The plan of activities for raising the level of consumer protection also envisages the opening of an advice office in the capital Podgorica and two other advice offices for the northern and southern regions of Montenegro, which will respond in a professional, independent and objective way to the problems and needs of consumers. The goal of the advice office would be to create conditions for better quality and more efficient consumer information, counselling and solving consumer problems with joint activities of state and local authorities, as well as the NGO sector. Also, activities of advice offices for key areas relevant to consumers would be developed, which would significantly reduce the number of unresolved consumer complaints and eliminate administrative and court procedures in which consumer disputes are resolved. Also, advice offices would be oriented towards more efficient and cost-effective solution of consumer disputes.⁴¹

In this way, the advice offices would be primarily focused on improving consumer awareness and providing advice, by increasing the involvement of local government in consumer protection. The plan of activities for raising the level of consumer protection in the local self-government units from 2016 also envisages the employment of experts in advice offices, the provision of spatial conditions and technical equipment for its work, as well as a special info line for citizens to report the problem.

40 Government of Montenegro, Ministry of Economy, Activity Plan on raising the level of consumer protection in local self-government units, Podgorica, July 2016, p. 3.

41 Government of Montenegro, Ministry of Economy, Activity Plan on raising the level of consumer protection in local self-government units, Podgorica, July 2016, p. 5.

3. Institutional framework for consumer protection in Montenegro

3.1. Ministry of Economy, Directorate for Development of National Brand and Consumer Protection and Consumer Protection Council

Ministry of Economy, as a key body responsible for consumer protection policy implementation. This body has the authority to undertake comprehensive measures for awareness-raising and informing consumers about their rights, as well as mechanisms for protecting consumer rights (economic interests of consumers and unsafe products on the market). Based on its authority, the Ministry established the Directorate for the Development of National Brand and Consumer Protection and consumer protection system.

The **Directorate for Development of National Brand and Consumer Protection** performs the following tasks: preparing drafts laws and law proposals, as well as other regulations in the field of national branding and consumer protection; preparing and giving opinions on drafts and proposals of laws and other regulations developed by other bodies; providing expert instructions, opinions and interpretations; monitoring and proposing consumer protection measures; developing a national consumer protection program and its implementation; proposing policies for the development and protection of the national brand; adapting national legislation from the Directorate's field of work to the EU legislation; cooperating at international and regional level in the field of national branding and consumer protection; keeping prescribed records in the field of consumer protection, cooperating with other bodies in order to enforce the established policies to the highest possible level; preparing tender documentation for public procurement within the Directorate's remit; and other operations in accordance with the law.

The Directorate for Development and Improvement of National Brands performs the following tasks: preparing drafts laws and law proposals which fall under the Directorate's remit; proposing, determining and implementing policies in the field of development and improvement of national brands; developing strategic documents of interest for the overall development of the national brand; analysing of the existing value and position of the Montenegrin brand and proposing measures for strengthening its value and development of specific brands; cooperating with international and domestic organizations in order to

promote and valorise the national brand; keeping a register of brands and their owners in Montenegro; other duties in accordance with the law.

The Directorate for Consumer Protection performs tasks related to: preparing drafts and proposals for laws and their regulations which fall under the Directorate's remit; proposing, determining and implementing policies in the field of consumer protection; development of a national consumer protection program and its implementation; cooperating with consumer protection organizations; adapting national legislation from the field of consumer protection to the EU legislation; keeping a register of consumer protection organizations; other duties in accordance with the law.

Consumer Protection Council was constituted in 2014. The President of the Council and its members, consisting of prominent experts in the field of consumer rights, are elected for a period of four years. In the first three months of this year, about 100 citizens addressed the Council for help, advice or complaint, which is significantly higher than in the same period last year. This speaks about raising awareness and interest in consumer rights, as well as possible ways to resolve disputes with traders.

Most of the questions or complaints were related to services of public interest, i.e. electricity, phone, internet and cable operators, but also price and product information mislabelling. In addition, a certain proportion of complaints were given regarding non-issue of receipts or about the issue of receipts not containing required receipt items, lack of information about complaints procedure. There were also complaints regarding returns and pricing, right to a guarantee period, complaints about the expired use-by date, term of use, conformity and lack of guarantee information.

The Consumer Protection Council sends the received complaint or information to the Administration for Inspection Affairs for further action/procedure. The work of the Council, which is a part of the Ministry, implies the implementation of activities aimed at protecting consumers in accordance with the Law, as well as further improvement of the legal system of protection, revision of regulations, educating and informing consumers.

3.2. Administrative and legal and out-of-court protection

Inspection control is carried out by the competent inspection bodies. In addition to the powers determined by the law regulating inspection control, the competent inspector is authorized to:

- **order the trader**⁴² to act on the complaint in the returns procedure within the prescribed time limit, i.e. to eliminate the identified irregularity and fulfil the consumers' request if the product contains a defect that was not caused by the consumer's fault, and if the price of the purchased product was wrongly calculated etc.
- **temporarily prohibit the trade** of certain products to the trader or distributor, if they: sell unsafe products, with an unspecified use-by date as prescribed; fail to inform the consumer on the valid prices in the prescribed manner or if the price label is misleading; fail to provide the consumer with the prescribed document and guarantee with the product; if the documents and labels on the product are not in the official language used in Montenegro, etc. The competent state administration body is obliged to alert consumers through means of mass communication on the risk of using a product available on the market and a product which was proven to be unsafe in the prescribed procedure. In addition to the aforementioned measures, in the event of non-compliance with the prescribed obligations, inspectors may take other measures as well, such as fine on the spot, initiation of the misdemeanour procedure, etc.

In April 2013, the Administration for Inspection Affairs set up a free call service 080 555 555, through which citizens can submit complaints about product safety (market surveillance) and protection of the economic interests of consumers. Other communication and information channels are also in operation, such as the e-mail: prijava@uip.gov.me, websites: www.uip.gov.me; www.ti.gov.me, www.potrosac.me; as well as other phones and e-mail addresses published on these websites. The Market Inspection has a duty inspector who is available directly in the office and by phone to consumers every working day from 8 am to 4 pm, and is, at the same time, a contact person for the aforementioned Central IT system for managing consumer complaints.

Out-of-court consumer protection is foreseen through the work of the Arbitration Committee, which was established at the Chamber of Economy of Montenegro, in order to resolve dispute by mutual consent between the trader and the consumer.⁴³ The consumer or consumer organization may initiate procedure before the Arbitration Committee, provided that they previously tried to resolve the dispute with the trader. Out-of-court protection is also recommended for consumers and traders for faster resolution and lower costs compared to the court protection procedure. Judicial protection of consumers whose rights or

⁴² Article 175 of the Law on Consumer Protection

⁴³ Article 181 of the Law on Consumer Protection

interests have been violated can be achieved by filing a request for compensation before a competent court in accordance with general regulations.

3.3. Commission for monitoring the implementation of the National Consumer Protection Program

The Commission for monitoring the implementation of the National Consumer Protection Program holds sessions with the previously determined agenda. Following the consideration of the agenda, it agrees on recommendation for further activities. Sessions are held if need be, at least three times a year.

The task of the Commission is to coordinate and monitor the implementation of the activities in the Action Plan, which is an integral part of the National Consumer Protection Program, and accordingly propose and take the necessary measures to improve the level of consumer protection in all areas.

The first session of this body was organized on September 24th, 2010.

3.4. Negotiating framework with the EU in the area of consumer protection – Chapter 28

Harmonization of the Montenegrin consumer protection system with the EU acquis is a key instrument for removing barriers to the implementation of ideas and principles of fair competition and social responsibility. Thus, it represents an effective legal consumer protection and the basis for the proper and smooth functioning of the market competition. Therefore, one of the objectives of the Montenegrin economic policy is to improve the protection of consumers and provide Montenegrin consumers with equal rights as those enjoyed by the EU citizens.

Potpisivanjem Sporazuma o stabilizaciji i pridruživanju između EU i njenih država članica, sa jedne strane i Crne Gore, sa druge strane Zakonom o ratifikaciji SSP (Službeni list CG br. 7/07), Crna Gora se opredijelila za evropski put i evropske standarde zaštite potrošača. , By signing the Stabilization and Association Agreement between the EU and its member states, and Montenegro One the one hand, and with the Law on the Ratification of the SAA (Official Gazette of Montenegro 7/07) on the other hand, Montenegro has opted for a European path and European consumer protection standards.

Based on this, significant results have been achieved in the past in the field of consumer protection. One of the most important is the opening of negotia-

tion chapter 28 - Consumer and Health Protection at the Intergovernmental Conference between Montenegro and the European Union, held in Brussels on December 16th, 2014.

In order to close this chapter, Montenegro will have to harmonize all legal regulations pertaining to consumer law with the European legal sources.

3.5. Penal policy in the field of consumer rights protection

Supervision over the implementation of the Law on Consumer Protection and the regulations adopted on the basis of this Law is performed by the Ministry of Economy and the state administration authority responsible for tourism.⁴⁴ In addition to the supervision described in Part VII of the Law on Consumer Protection, the legislator also provided for penal provisions.⁴⁵ This part gives listing of the majority of sanctions. For example, it is foreseen that a legal person – a trader -will be fined from EUR 3,000 to EUR 40,000 if: 1) they remove or change data from description of goods or services or provide false information in the description of goods or services (Article 7 paragraph 7); 2) the price of goods is indicated in a misleading way (Article 12 paragraph 2 item 1); 3) they do not abide by the established and displayed conditions of sales benefits (Article 28 paragraph 2); 4) they have not provided the consumer with access to and use of the service of public interest under the conditions prescribed by this Law (Article 35, paragraph 2, items 1, 2 and 5); 5) they do not clearly display in the offer or advertisement the price per unit of measure, price of other supporting elements in accordance with special rules, which are not calculated according to the amount consumed, as well as the price for connection to the supply network (Article 40); 6) they fail to fulfil the guarantee under the conditions contained in the guarantee statement and in the advertisement relating to the goods (Article 51 paragraphs 1 and 5 and Article 54); 7) they use unfair contractual terms (Article 104 in conjunction with Article 102); 8) they incorrectly claim to be a signatory of a particular code (Article 114, paragraph 1, item 1); 9) they highlight trademarks, quality marks or similar signs without the necessary approval (Article 114 paragraph 1 item 2) and in many other cases.⁴⁶

In the case of the most serious misdemeanours, the law stipulates that it is possible to impose a fine on a legal entity and an entrepreneur amounting to 5% to 10% of a protected value.⁴⁷

44 Article 174 of the Law on Consumer Protection

45 See Part eight of the Law on Consumer Protection

46 See Article 176 paragraph 1 of the Law on Consumer Protection

47 Article 176 paragraph 4 of the Law on Consumer Protection

In addition to these misdemeanours, other laws in the field of consumer law provide for sanctions. All these cases refer to misdemeanours. These penal provisions will not make any sense if they are not applied or if they are applied arbitrarily and selectively.

3.6. Civil sector and consumer policies in Montenegro

Civil sector should have a very important role in protecting consumer rights. In the previous period, NGO CEZAP, NGO CeMI, NGO ECOM and others paid special attention to this topic. The main task of the civil sector is to inform citizens about their rights, provide them with specific (legal) advice and refer them to institutions that are responsible for resolving possible omissions or failures by traders. The civil sector also has the task to influence the development of public policies through proposals, suggestions and criticisms to decision-makers at the state and local levels.

The Law on Consumer Protection prescribes significant authorities to consumer protection organizations. For example, before determining the price of the service of public interest, the trader is obliged to request an opinion from the organizations dealing with this topic⁴⁸, and it is especially important to emphasize the right to initiate. The records and association of consumer organizations are managed by the Ministry of Economy. Consumer organizations can organize associations in order to have a better impact on consumer protection policies, as well as to represent and participate in authorities and organizations at the national and/or local level and international consumer organizations.

4. Consumer protection in the European Union

4.1. Origins and development of protection in the European law

From the very beginning, the European Consumer Protection Law was developed with a twofold aim: firstly, reaching a high general level of consumer protection and, secondly, ensuring the smooth movement of goods and services between member states by establishing harmonized legal regulations

⁴⁸ Article 37 paragraph 3 of the Law on Consumer Protection

among them. Thus, the development of the European consumer protection right was not only conditioned by the aim to provide consumers with a high level of protection, but there was also another aim, which is the essence of the constitution and existence of the European Union: the establishment and realization of a common market. A significant problem is the fact that these two goals are sometimes in conflict and that one is limiting the other. Namely, the establishment of strict regulations that would provide a high level of consumer protection represents a burden on traders who have to comply with their legal regulations, which ultimately results in slowing trade between Member States. This argument is often raised by the European Commission when there are complaints that consumer protection legal regime is inadequate, which was the case with the adoption of Unfair Commercial Practices Directive and the new Directive on Consumer Rights.

This is particularly noticeable since the European Commission in most cases adopts consumer rights directives under Article 114 of the Lisbon Treaty, where the priority is the interest of creation and strengthening of the common market, rather than the protection of consumers. On the contrary, Article 169 of the Lisbon Treaty presents a constitutional legal basis for the regulation of consumer protection rights. However, it is surprising that this article is only exceptionally used as a legal basis for the adoption of relevant regulations in the field of consumer rights. For example, this is the case with the Directive on Price Labelling, which was adopted on the basis of this legislation. However, when it comes to most other directives, Article 114 is the basis for their adoption.

Consumer protection under the auspices of the European Union did not always follow a uniform pattern. The original Treaty establishing the European Community of 1957 did not contain a catalogue of consumer rights and interests. Consumer protection was part of the Community's policy aimed at establishing a single market, a common agrarian policy, increasing productivity, banning agreements and state aid that violate or threatened to distort the market competition. Since there was no provision in the Treaty establishing the European Community that could contribute to the creation of uniform legal rules, alternative ways of acting in harmonizing the protection of consumer rights were applied.⁴⁹ This was a two-way process - through the so-called soft law (adoption of recommendations, resolutions), and adoption of guidelines. Guidelines could be adopted on the basis of Articles 94 and 95 of the EC Treaty which allowed their adoption only if they contained provisions that directly influenced

49 Ana Pošćić, *Zaštita potrošača u kontekstu slobode kretanja robe*, u *Zaštita potrošača i ulagatelja u europskom i hrvatskom pravu: izazovi međunarodnog tržišta roba i kapitala*, uredile Vesna Tomljenović, Edita Čulinović-Herc, Rijeka, Pravni fakultet Sveučilišta, 2005, p. 390.

the functioning of the common market. The application of “soft law” and the adoption of guidelines is the so-called positive harmonization, while the other type of harmonization (the so-called negative one) was created through the action of the European Court in the examination of certain national provisions that made it difficult or restricted the free circulation of goods from the point of view of consumers.⁵⁰

Over time, these provisions have included new norms with significantly higher legal power. Today, the Charter of Fundamental Human Rights in the European Union⁵¹, which became an integral part of the Treaty on the Functioning of the European Union after it entered into force, contains one provision (Article 38) on consumer protection.⁵² Other significant general provisions on consumer protection are contained in Articles 12 and 169 of the aforementioned Treaty on the European Union. They strengthened the legislation in this field, but also the role of the European Court, paving the way for the free movement of goods and protection of consumers, which will be further discussed.

For this reason, we will initially pay attention to some decisions issued by the European Court, which are dominantly adopted on the basis of the most important EU legal acts.

The fundamental rule on the prohibition of discriminatory treatment by Member States is laid down in Articles 28 and 29 of the Treaty establishing the European Community, which prohibits quantitative restrictions on imports and exports, as well as all measures having the same effect between States.

The European Court defined the terms “quantitative restrictions” and “measures having equivalent effect” in the case ***Procureur du Roi v Benoît and Gustave Dassonville***⁵³. Dassonville wanted to import into Belgium a Scotch whiskey which was put in free circulation in France. As opposed to Belgium, France did not request a certificate of origin. He could obtain such a document only with extensive difficulties from the UK customs. Dassonville considered that the Belgian law was contrary to the Treaty establishing the European Community, which prohibits quantitative restrictions and measures having equivalent effect among Member States. Such a regulation makes it very difficult to import products to Belgium from other countries. The Belgian court requested from the European Court to interpret Article 28 of the Treaty. The question was raised as to whether a national provision requiring an imported product to have an original document of origin constitutes a measure of the same effect as the

50 *Ibidem*.

51 OJ 2000 C 364, p. 1.

52 “Union policies shall ensure a high level of consumer protection”.

53 *Procureur du Roi v Benoît and Gustave Dassonville*, C 8-74, Judgement of 11 July 1974.

quantitative limitation referred to in Article 28. The European Court interpreted a Belgian regulation requiring the original document of origin of a product which had already been in free circulation as a measure of the same effect. It stated that discriminatory measures are not the only thing that matters, but also its actual effect. In addition, the prohibition does not only cover discriminatory intentions but also any rule or measure applied to products in the importing country. In this way, it is possible to extend the Guideline 70/50 which made distinction between measures applied to both domestic and imported products, i.e. non-discriminatory measures which are not subject to prohibition, and those that apply only to imported products, i.e. discriminatory measures.

There is also a very important decision of the European Court prescribing that, due to the lack of a European Union system which guarantees the authenticity of a product's designation of origin to consumers, Member States may take measures to prevent prohibited practice, but these measures must abide to the rule of reason and be proportionate.

In addition to the provisions of Articles 28 and 29 of the Treaty establishing the European Community, the European Court also dealt with non-discriminatory measures and Article 30 in the **Cassis de Dijon**⁵⁴. This is perhaps the most important decision of the European Court in the field of movement of goods. It established the principle of mutual recognition, on the basis of which products that meet the standards for the sale in one Member State can be lawfully sold in other Member States. This establishes the principle of “unilateral requirement”, i.e. the product must meet the criteria of only one state. Accordingly, “bilateral requirement constitutes an obstacle to the freedom of movement of goods”.⁵⁵

Cassis de Dijon is an alcoholic liqueur imported from France to Germany. German law specifies the minimum amount of alcohol that a drink may have to be sold as a liqueur (25%). Cassis has 15% -20% alcohols. The reason for this is the protection of health, because consumers would consume more liquor if the percentage of alcohol in the drink was lower, which would lead to health threat. The sale of Cassis is not allowed in Germany because it does not meet the standards prescribed by the German Law on Alcoholic Beverages. In the proceedings before the European Court of Justice, Germany pointed out that determining the minimum alcohol content is necessary in order to protect consumers from the unfair practices of producers and distributors. The European Commission rejected this argument claiming that consumers could be protected by the proper labelling of the product with the alcoholic strength. Furthermore, the European Commission has pointed out that determining the

54 *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein*, Case 120/78, Judgement of 20 February 1979.

55 Pošćić, op. cit, p. 392.

minimum content that alcohol beverages must have can lead to standardization and product determination, all in the interest of greater transparency of commercial transactions. The plaintiff therefore considered that the German law constituted a measure having the same effect as a quantitative restriction. He also considered that the determination of the minimum alcohol content by German law leads to the well-known alcoholic beverages produced in other Member States of the European Community not being sold in the Federal Republic of Germany and the said provisions therefore constituting a restriction on the free movement of goods between the Member States, which goes beyond the scope of trade rules that Member States may adopt.

For the first time, the European Court has confirmed that Article 28 of the Treaty also covers measures that apply in the same way to both domestic and foreign products. On the basis of this judgment, another principle, known as “the principle of mutual recognition” or “the principle of equality” was confirmed. *The principle of equality means that Member States must not, in principle, prohibit the trade in products lawfully produced and distributed in their territory.* It is only in specific cases that States are allowed to restrict access to products that are legally produced only if there are no harmonized legal rules and if they are necessary in order to satisfy compulsory requirements such as: effective financial supervision, public health protection, fairness of commercial transactions, protecting the environment, protecting consumers etc.

The distribution of alcoholic beverages has led to several very significant judgments of the European Court regarding the principle of free movement of goods and consumer protection. Among others, we will analyse the cases **Fietje**⁵⁶ and **Beer Case**⁵⁷.

Fietje sold an alcoholic drink that did not have a *likeur or liqueur* label. Such a label was required by the Dutch legal regulation. In this way additional costs were incurred for importers. The Netherlands, on the other hand, emphasized that it was necessary to protect consumers. Such an action by the Dutch Government was, however, considered disproportionate. The European Court considered that information on the original label would be sufficient for consumer protection. The requirement for special labels can not be justified when the imported product already contains labels with certain information that the consumer can equally well understand. The European Court has found that the national measures of the Member States prohibiting the sale of certain alcoholic products without particular labels (in this case a “likeur” label) on

56 Criminal proceedings against Anton Adriaan Fietje, Case 27/80, Judgement of 16 December 1980

57 Commission of the European Communities v Federal Republic of Germany, Case 178/84, Judgement of 12 March 1987.

imported products which are legally widespread in their country, by imposing an obligation to change the label on the same product, represent measures of the same effect, and are banned until the details on the original label provide the consumer with sufficient information on the nature of the product. This resulted in situations that the labels of the products legally widespread in one state, had to be changed. This did not prohibit the import of the products, but made it more difficult. However, the European Court has left the national court to ascertain whether a particular regulation contains all the information corresponding to the description of the product subject to control and falls within the scope of application of the aforementioned legal regulation.⁵⁸

Beer Case⁵⁹ is also a very interesting case. German legislation provided for the possibility of distributing imported beers only if it is in accordance with German legal regulations. This effect has been achieved by prohibiting the use of the designation “beer” for products that did not contain ingredients required by the national legislation and banning beers containing additives. In Germany, there was a Law on Beer Purity, which allowed the products to bear the name beer only if they were made from certain cereals, hops, yeasts and water. Other beers could be sold but not under the designation “beer”. Also, beers containing artificial additives could not have been sold at all in the territory of Germany, unless they had special approval. In order to obtain this approval, it was necessary to prove that it was a harmless additive, and that it was necessary for technical reasons. Germany stressed two reasons for introducing such measures. The first one was the protection of health and the second one the consumer protection. Regarding the use of the additive, they stressed that due to the high consumption of beer in Germany, the use of additives would have major consequences on the health of consumers. This argument was accepted by the European Court and it stated that certain types of additives may pose a health risk and, in such situations, they should be legally excluded from the domestic market. Germany failed to prove this. However, the German rule containing a complete ban on additives could not be justified by posing a health risk. Germany defended its rules by stating that it wants to protect consumers who, by the name of beer, mean only alcoholic beverages containing ingredients required by national regulations, and that its legislation is not protectionist in aim, since any trader who produces beer in accordance with German regulations can freely distribute their products in Germany. It was also stated that German consumers were taught to drink beer containing only the four ingredients mentioned. The European Court did not accept such an argument and condemned this behaviour. The European

58 Pošćić, p. 395.

59 Commission v Germany, Case 178/84, Judgement of 12 March 1987.

Court was of the opinion that consumers can be protected in a different way, which limits the free trade less. Therefore, the European Court emphasized that it is necessary to enable the consumer to make an independent choice, by providing them with adequate information about the ingredients contained in a beverage, which will result in transparency in the offer⁶⁰. Product labelling would be enough to protect German consumers.

In addition to the aforementioned “liquor cases”, the European Court also dealt with legal issues concerning the introduction of measures that made it difficult to import food products.

In the **Zoni case**⁶¹ there was a problem with pasta imports. Zoni imported pasta made from common wheat and durum wheat from Germany to Italy. This was a contravention of the Italian rules that allowed the production of pasta only from durum wheat. This only applies to dry pasta that can be stored for some time before it is consumed. So it is prohibited to sell pasta in Italy containing other ingredients in Italy. Italy defended itself by stating that it guarantees the quality of pasta, and emphasizes the reasons for the protection of public health. However, the European Court did not accept the Italian Government’s call for the need to protect consumers by prohibiting the sale of pasta, the ingredients of which do not correspond to Italian regulations. In the Court’s view, the consumer can be “protected” by labelling the nature of the product on the label. Italians have argued that the label on the product is not sufficient because Italian consumers are taught that under pasta they mean that made of durum wheat. It is rejected because, and as the European Court states, pasta is a generic term and does not imply only pasta made from durum wheat.

As we have seen in these cases, the European Court does not approve the different treatment of States in relation to imported products because of the need for consumer protection. It states that the principle of consumer protection will be met if clear and relevant information is provided.

4.2. Sources of consumer protection law in the European Union

As we could have seen, the Court of Luxembourg had a great contribution to the protection of consumer rights in “protecting” the founding acts but also respecting the European directives. Today, tens of these sources are in force and Member States are obliged to apply them. It may be noted that at first these Directives, with the only exception to the Directive on Unfair Contract

60 Point 35 of the judgement in Beer Case.

61 Criminal proceedings against Zoni, Case 90/86, Judgement of 14 July 1988.

Terms, regulated only certain types of consumer contracts that make consumers particularly vulnerable, such as off-premises contracts or consumer credit contracts. However, in the last couple of years, it is possible to notice the tendency of adopting directives with much wider scope of application, not limited to just one particular type of contract. This is, for example, the case with the new **Consumer Rights Directive**⁶². The Directive on Off-Premises Contracts is the first directive in the area of consumer law regulating a particular type of consumer contract. This directive refers to consumer contracts concluded in the situations when the consumer is particularly vulnerable because of the unexpected situation they found themselves in, most often at the doorstep or workplace, where the trader offers their products. At such moments, the consumer is not able to reflect carefully and compare the price offered and the product with other similar or same products and prices. This directive first introduces the definition of the consumer and the trader, thus specifying the exact cases to which this special legal regime applies into the European consumer protection law. A consumer is any natural person who appears in the market as an actor carrying out activities not in line with their profession or field of work. Although the directive was adopted almost thirty years ago, the definition of consumer adopted by these directives has only been slightly altered.

The Directive on Unfair Terms in Consumer Contracts has established significant restrictions on the freedom of contracting in consumer contracts, thus affecting the very core of contract law. The provisions of this Directive restrict the freedom of contracting to the trader by preventing them from imposing on the consumer contractual provisions which are considered to be unfair by virtue of this Directive. The Directive on Distance Contracts regulates the type of consumer contracts concluded without the simultaneous physical presence of a trader and a consumer. This directive is a legal response to new ways of concluding contracts resulting from the significant development of various contemporary means of distance communication. In addition, this Directive regulates certain prohibited cases of trader's business practice, such as sending goods which were not ordered, which is more detailed and more elaborate in the Directive on Unfair Commercial Practices.

The Directive on Distance Contracts regulates the type of consumer contracts concluded without the simultaneous physical presence of the trader and the consumer. This directive is a legal response to new ways of concluding a contract that has resulted from the significant development of various modern means of distance communication. In addition, this Directive regulates certain other unauthorized cases of trader's business, such as the dispatch of

62 Nebojša Lazarević, Mateja Đurović, Milena Lazarević, Miloš Đinđić, *Studije potrošačke politike u Srbiji*, 2013 p. 13

unwanted goods, which is elaborated in more detail in the Directive on Unfair Commercial Practices.

The Directive on the Sale of Goods regulates the contractual relationship between the trader and the consumer in the case of a contract for the sale of goods. The basic aim of this directive is to legally ensure that the consumer obtains the product from a trader which is fully in line with the concluded consumer contract. This Directive has fundamentally altered the Member States' national laws by establishing a single European legal regime for consumer contracts on the sale of goods.

In addition to these directives, it is also important to mention the Unfair Commercial Practices Directive, Direktivu o potrošačkom, the New Directive Consumer Rights etc.

4.3. Institutional models of consumer protection in the European Union member states

Regarding the mechanisms for the implementation of consumer law, EU Member States apply two basic approaches: the administrative one, implying the existence of some administrative bodies (such as the Commission for the Protection of Competition) and the civil one, applying general civil law sanctions (based on decisions of courts with general jurisdiction). Administrative approach prevails in practice in several different forms. Germany and Austria are typical examples of the civil approach, while France and the Netherlands are examples of the administrative one.⁶³

5. Comparative analysis

5.1. Consumer protection in Serbia

Like other countries of the former Yugoslavia, Serbia did not have a rich tradition of consumer rights protection. The only basis can be found in legal frameworks that apply to Montenegro or the Republic of Croatia.

⁶³ More information available in: Lazarević i ostali, *Ibid*, p. 20-25.

Consumer protection represents a constitutional category in the Republic of Serbia. Article 90 of the 2006 Constitution of the Republic of Serbia stipulates that the Republic of Serbia shall protect consumers, and it particularly prohibit actions directed against the health, safety and privacy of consumers, as well as all the illegal actions on the market. It was back in 1974, that Yugoslavia defined by its Constitution some of the principles of regulating relations between producers, traders and consumer organizations. Under Article 78 of the Stabilization and Association Agreement, Serbia undertook to harmonize its consumer protection legislation with the standards of protection which are in force in the EU. Effective consumer protection is necessary in order to ensure the proper functioning of the market economy, and protection will depend on the development of administrative infrastructure aimed at ensuring market surveillance and law enforcement in this area. At the end of July 2013, the Government of Serbia adopted the Consumer Protection Strategy for the period 2013-2018. The general goal of the Strategy is to provide a high level of consumer protection in the Republic of Serbia by 2018 and to improve the system of consumer protection in accordance with the standards and practice of the European Union.

Consumer protection is a single chapter in Serbia's progress reports, as well as in negotiations with the EU in the accession process (Chapter 28).

In addition to the Ministry and other bodies and organizations, consumer protection is also a responsibility of alliances and associations whose activities are aimed at achieving the goals of consumer protection.

The Government of the Republic of Serbia adopted the Decision on the Establishment of the National Consumer Protection Council on 18 October 2012 in order to create a unique consumer protection policy in Serbia.

Criticism of civil society is related to the legal regulation pertaining to the establishment of consumer associations. The basic requirement for registering in the association or alliance for consumer protection is the Law on Associations, i.e. registry in the Business Registers Agency. The legal definition of associations and alliances is very general and refers to associations that have been established in accordance with the law regulating the establishment and legal position of the association, whose aim is to protect consumers.

The consumer protection system found its basis as a constitutional category under Article 90 of the Serbian Constitution. Serbia has confirmed the obligation to respect consumer rights by joining the Stabilization and Association Agreement, while the legal framework primarily includes the Law on Consumer Protection, which was adopted in 2014. The Law defines more closely the terms

used in the wider consumer-trader relationship. In accordance with the relevant provisions of the European Union consumer law, this law defines a consumer exclusively as a natural person appearing in the market as an actor carrying out activities non-relating to trade or other commercial purposes. Traders are any natural person or legal entity appearing in the market as an actor carrying out activities relating to trade or other commercial purposes. In order to provide better and more timely information to consumers, the law prescribes that traders have to display in an unambiguous, easily visible and simple manner prices and unit prices of goods and services, prices of time unit if the service is charged by hour, as well as additional costs. If the retail and unit cost of the goods is equal, it suffices to point out only the retail one. At the same time, the price of goods is displayed on the packaging of goods, in the price list and in the shop window, while the previously packed goods must have both the retail and the unit cost indicated. When it comes to services, the trader is obliged to compile and display a price list or tariff for the service, allowing the consumer to easily notice the price.⁶⁴

On its path to the European Union, Serbia has begun to adapt its legislation to the standards envisaged by the law of this supranational organization. However, without a rich heritage in this area, as it is the case in to Montenegro, there are still significant shortcomings in the protection of rights primarily for end users. Further in the analysis, similar solutions will be presented regarding the Serbian and our legal system which should be changed. More about this in further text.

5.2. Consumer protection in the Republic of Croatia

The Law on Consumer Protection (Official Gazette 41/14) makes the legislation of the Republic of Croatia fully in line with the EU *acquis*. However, apart from the Law on Consumer Protection and on the grounds of the idea that consumer protection is a horizontal policy of the European Union and that consumer protection must be taken into account in all segments and situations in which consumers appear on the market, consumer protection regulates and shapes a variety of other laws. The most important ones are:

1. Law on Contractual Relations (OG 35/05, 41/08, 125/11)
2. Law on General Product Safety (OG 30/09, 139/10, 14/14)
3. Law on Prohibited Advertising (OG 43/09)
4. Law on Consumer Credits (OG 75/09, 112/12, 143/13, 147/13)
5. Law on Credit Institutions (OG 159/13)

64 Lazarević, p. 27-28.

In the field of product safety, the relevant European legislation has been implemented in the Croatian legal system primarily through the Law on General Product Safety and the Law on Technical Requirements for Products and Conformity Assessment. While the Law on Technical Requirements for Products and the Conformity Assessment, as the name itself suggests, prescribes the technical requirements of products and the procedure for assessing their conformity, the Law on General Product Safety regulates the criteria that all products offered on the market must fulfil in order to be considered safe. Consumers should be able to obtain at any time all relevant information regarding the safety of products offered on the market. In this context, RAPEX (Rapid alert system for dangerous consumer products) system is particularly important for rapid notification between Member States and the European Commission when there is an unsafe product on the market or a product that presents a serious risk to the health and safety of consumers.

The Law on General Product Safety is a general regulation in the field of product safety, setting out a general safety framework that applies to all aspects and types of risks if they are not regulated by a special regulation. The Law regulates the prohibition of the production, import, export, advertising or placing dangerous counterfeit products on the market, and provides the definition of a safe product. Inspection control over the implementation of the Law on General Product Safety is performed by market inspectors of the Ministry of Economy under the Law on General Administrative Procedure. Inspectors of the Ministry of Economy have the authority to take appropriate measures, as well as to implement emergency measures in cases where the product poses a serious risk to consumers, and therefore have the authority to prohibit the placing of dangerous products on the market. If a dangerous product is already on the market, inspectors of the Ministry of Economy have the right to order or organize its immediate and effective withdrawal, i.e. return of products by the consumer and its destruction. In relation to the business sector, the Law encourages the voluntary action of producers and distributors and the creation of good practice rules in certain product safety sectors.

In 2009, the Law on Prohibited Advertising was adopted, with the purpose to protect traders against misleading advertising and the negative consequences of such advertising, as well as to prescribe the circumstances under which comparative advertising is permitted. Prohibited advertising is any advertising that misleads or is likely to mislead those to whom it is addressed, which could affect their economic behaviour, or that violates or is likely to violate competitors on the market. This kind of advertising is banned. Comparative advertising is any advertising that directly or indirectly refers to market participants, i.e. goods or services of an actor in the market. Such advertising is permitted only if specific

legal requirements are met. Namely, regulating the forms and contents of the allowed comparative advertising enables the objective presentation of different products on the market that can be compared to each other, which represents an important information tool to consumers. In order to protect the market competition and to create the basic conditions for the proper functioning of the market, the Law on Prohibited Advertising has envisaged a special mechanism that will suppress the emergence of prohibited advertising practice. This is a system of collective protection of traders' interests. Having adopted the Decree on determining persons authorized to initiate proceedings for the purpose of collective protection of traders against unauthorized advertising (Official Gazette 88/09, 155/09), the Government has appointed bodies and persons authorized to file a lawsuit in its own name but in the interest of all traders, in order to terminate the unauthorized advertising practices. The aim of such a measure is to protect the entire population of traders on the market, and the public at large. At the same time it has a preventive function.

A special place in the overall law regarding consumer protection certainly belongs to the Law on Consumer Credits – the Law that undoubtedly plays a great role in business practice, and an area where the disparity between the knowledge and information of the parties is particularly evident. It also regulates consumer credit agreements, more specific terms and conditions in which they can be offered to the consumer through the obligations of the creditor and credit intermediaries in relation to the consumer, and the rights of consumers in that specific contractual relations. In order for the consumer to know in advance what is expected after the conclusion of the contract on consumer credit, the Law stipulates that it is necessary to inform about a number of elements of the future contract, and in particular about the effective interest rate and the total cost of the credit, prior to the conclusion of the consumer credit contract.

This law also provides consumers with the right to unilateral termination of the contract, which is referred in this Law as the cancellation right. The Law on Consumer Credits regulates some specific questions regarding credits such as revolving credits, early credit repayment, linked credit agreements, and assumed account overdrafts. Finally, this Law specifically regulates the position and role of credit intermediaries.

According to the Law on Consumer Protection, entities responsible for consumer protection are the Croatian Parliament, the Government of the Republic of Croatia, the ministry responsible for consumer protection, primarily the Ministry of Economy, the competent inspection bodies, the National Consumer Protection Council, the consumer protection associations, the local self-government units, and other business associations and public authorities such as

the Croatian Chamber of Economy, the Croatian Chamber of Trades and Crafts and the Croatian Employers' Association.

The Consumer Protection Development Department of the Ministry of Economy carries out a wide range of tasks related to consumer protection, such as:

- participating in the drafting and implementation of laws and other regulations related to consumer protection,
- providing expert opinion on consumer protection,
- carrying out activities related to the adaptation of national legislation to the EU legislation in the field of consumer protection,
- cooperating with the courts of honour of the Croatian Chamber of Economy and the Croatian Chamber of Trades and Crafts in resolving consumer disputes,
- drafting reports to systematically inform the competent authorities on the degree of harmonization of legislation for the purposes of the Republic of Croatia's accession to the European Union,
- performing expert tasks related to the work of the National Consumer Protection Council,
- establishing and maintaining the Central Information System for Consumer Protection.

The tasks of the Consumer Protection Department fall under the responsibility of: 1. Department for the development and monitoring of the consumer protection system 2. Department for education and information on the consumer protection system 3. Department for harmonization of legislation in the field of consumer protection 4. Department for programs and projects of the European Union in the field of consumer protection.

Market inspectors of the Ministry of Economy and other competent inspections supervise the implementation of the Law on Consumer Protection. When carrying out the supervision, they are entitled to:

- temporarily prohibit the trader to sell products and provide services
- order the trader to eliminate the identified irregularities
- in certain situations stipulated by the Law, order the return of the previously collected amount to consumers.

The National Consumer Protection Council is an advisory body established by the Government of the Republic of Croatia for a period of four years. It consists of representatives of state bodies responsible for consumer protection, traders and independent experts in the field of consumer protection. It is responsible for the development of the National Consumer Protection Program and it reports on its implementation, encourages the amendments to the existing

regulations and the adoption of the new ones, participates in the creation of a consumer protection policy and reports to the Government on cases of violations of good business practices.

The Croatian Chamber of Economy, the Croatian Chamber of Trades and Crafts and the Croatian Employers' Association organize reconciliation centres to deal with consumer disputes, establish and organize the courts of honour to decide on the rights of consumers by individual traders, inform their members about the obligations imposed on them by the rules about consumer protection.

Consumer protection associations are established by consumers to protect their rights and interests. They work independently of the interests of traders and are not allowed to receive funds from them; they provide consumers with preventive protection, inform them about their rights and obligations, conduct comparative and follow-up product testing, provide advice to consumers who complain against a trader who has given them a bad service, keep records of received consumer applications and actions taken to resolve them, provide comments and suggestions when adopting regulations related to the field of consumer protection, initiate collective consumer protection proceedings before competent authorities.

Thus, as it can be noticed, Croatia has begun to develop awareness of consumer rights only after gaining independence. However, this does not mean that there were no statutory provisions regulating certain segments of consumer's position. They were scattered in a number of laws, primarily in the Law on Contractual Relations in 1978, as well as the Law on Trade, the Law on Market Inspection, the Law on Protection of Market Competition, etc. There were also positive examples of efforts to protect and inform Croatian consumers and sensitize the public for consumer protection issues, such as a special way of controlling the quality and safety of cars introduced in 1997, followed by strict control of medicines and medical equipment by the Ministry of Health, true and complete labelling of the properties of the products intended for personal hygiene, Law on the insurance of savings deposits, etc. The first association called the Consumer Protection Association was established in 1997⁶⁵. However, the intensive development of consumer protection rights begins only when the Republic of Croatia joins the European Union.

It can be concluded that Croatia, as all other republics of former Yugoslavia, recognized rather late the importance of this issue and the protection of its citizens as consumers in the form of formal legal protection.

65 Babić, p. 3

The first comprehensive Law on Consumer Protection was adopted in 2003 and was actually the beginning of the transposition of the European guidelines into the Croatian legal system, more as an obligation on its path to membership in the European Union than as a mature social and political awareness of the need to introduce norms of behaviour to a market which was already under-developed. The 2003 Law had its own shortcomings and inconsistencies; for that reason, and due to the further development of the European law and the need for new harmonization, a new Law on Consumer Protection was adopted in 2007. Amended six times, it was in force until 2014, when the applicable Law on Consumer Protection came into force.

Croatia started the path to full membership in the European Union in 2000. In order to fulfil the conditions for full membership, it was necessary to ensure a free market economy, the rule of law and respect for human rights and democratic principles, along with the stability of institutions that ensure democracy.

5.3. Consumer protection in Germany

Unlike Serbia, Croatia and certainly Montenegro, Germany is an example of best practice when it comes to consumer protection.

The development of the consumer protection system in the Federal Republic of Germany has a long tradition of more than 60 years. After the end of the Second World War, various private and non-profit associations were created in order to solve the daily consumer problems of individuals. The association of housewives was among the first ones to be established. In the 1970s and 1980s, with a rapid increase of consumption, the new financial instruments emerged (credits, insurance, etc.), along with the need to make correct consumer decisions. After that, in the 1990s, under the influence of the European Union and the privatization of state-owned enterprises in the field of telecommunications and transport, there was a particular problem with end-users, which affected the significant development of the system for their permanent protection.

Nowadays, the system for consumer protection in the Federal Republic of Germany **has been developed at all levels** - federal and provincial level and the level of local self-government. It is implemented through several blocks:

- **the first block** consists of the federal Ministry of Food, Agriculture and Consumer Protection, as the line ministry, and other ministries dealing with the field of consumer protection, four state research institutes and the Directorate for Prevention and Protection against Risks;
- **the second block** consists of 16 provincial ministries; and

- **the third block** consists of the following independent institutions: the Institution for Testing Products and Services, the Federal Association of Consumer Protection Organizations, 16 consumer organizations, which, unlike in other countries, have significant impacts on consumer protection, and the local consumer bureaus and advisory centres at local level.

Cooperation between the institutions of the first and second blocks is based on the exchange of information and harmonization of the consumer protection policy, with the ultimate goal of creating favourable and legislative regulations. The third block institutions are the initiators of specific consumer protection activities. They are partly financed from the budgets of federal and provincial ministries, and local self-government bodies, and partly from own resources.

The basic function of the Ministry of Food, Agriculture and Consumer Protection is to create a legislative framework for consumer protection and funding consumer protection institutions (NGO sector).

The principles of the Ministry as the holder of state policy in the field of consumer protection are:

- consumer protection is a common task of all spheres of politics, and hence one of the tasks of the Ministry is the initiation of a permanent dialogue between the policy, the economy and the non-governmental sector;
- consumer policy is not just an economic policy whose main goal is to protect consumers, but also a tool for creating a market;
- consumer protection policy is also a support to the growth of quality of goods and services, considering the impact of the Institution for testing of products and services (Stiftung Warentest) in terms of the requirement to maintain a high level of quality of products and services.

In addition to the aforementioned Ministry, it is also important to mention the work of the **Federal Institute for the Food Protection and Safety (BVL)**, which has been established with the basic aim of incorporating the functions of prevention, management and information on risks related to product safety.

The basic task of the Institute is to ensure the safety of food at the level of the Federal Republic of Germany, i.e. to protect consumers from direct or indirect danger from unsafe food and animal feed.

In addition, another institution in charge of assessing and informing about risks is the Federal Institute for Risk Assessment. In this regard, **the activities of the Institute** are:

- **installation of RASFF and RAPEX rapid alert and response system**, since the Institute represents a national specific place for this system

at the European Union level. RASFF is a system of consumer protection against direct or indirect risk of contamination of food and animal feed. Access to this system is provided 24 hours 365 days a year;

- **Timely detection of hazards**, because the Institute is a coordination body for information collection and reporting;
- **Networking and national communication system**, with the aim of improving provision of information to consumers (Internet communication platform for information on product safety, internet portal and end-user information magazine);
- **Coordination, preparation and planning of food safety** at the national level;
- **Conducting product approvals procedures from the aspect of safety**, before placing the products on the market.

In the consumer protection system in the Federal Republic of Germany, there are **16 consumer centres** representing consumer organizations at the provincial level, followed by one or more local central offices financed by the consumer centres, to which they are due to report about their work. All these institutions have the same function: to inform and advise consumers, which they carry out fully professionally and independently.

The Consumer Centre Hamburg is a private association that gathers various members such as: natural persons, trade unions, various associations and church organizations that voluntarily join the association, which indicates independence from the state and the economy, as well as a wide range of different layers of consumers. The centre is managed by a representative office, which is elected by members every other year, and which represents the manager.

The Consumer Centre Hamburg provides information, advice and support when contracting and executing contractual activities to all consumers, regardless of whether they are members of the association or not.

Regarding institutions dealing with out-of-court settlement of disputes, it is important to mention institutions whose purpose is to **solve problems in national and international rail and air transport of passengers by applying an out-of-court settlement procedure**. The services of conducting the procedure are free of charge, and the only condition for their initiation is that the consumer first contacted the offending party and that they either failed to respond or responded negatively.

Activities carried out by this institution are as follows:

- **dispute resolution**
- **mediation procedures before the judicial authorities**

- informing about rights and obligations
- mediation in higher instances

This institution works closely with other institutions in the consumer protection system, which is why some cases are forwarded to the Consumer Centre.

In practice, the arbitration procedure is not binding for either side, but it could be a good additional expert opinion for making final decisions. The out-of-court dispute resolution is a useful tool for protecting consumers both for the line ministry, and for travellers, businesses and the entire economy.

The German consumer protection system also includes a non-profit organization (**Stiftung Warentest – Institution for Testing Goods and Services**) which has existed for more than 50 years, and whose primary task is to test food and non-food products and services, and to inform consumers about the results of testing through a regular release of the magazine “Test” and other publications, which are sold on the market. The Institution for Testing Goods and Services carries out about 120 comparative testing per year covering about 4000 products. The size of the sample for testing depends on the financial capabilities, the technical capacities of the laboratories that carry out the tests and the time available. The definition of the sample is done in cooperation with the research institute, which eliminates the bias and decreases the responsibility of the Institution. In each testing, an expert council is first formed, consisting of representatives of manufacturers, consumers and neutral experts. Then, a test plan is drawn up defining the criteria and methods of testing sent to everyone involved in the Council, as well as to each manufacturer whose product is subject to testing. This provides full transparency.

It is important to highlight the existence and work of the Consumer Centres Association, which was founded in 2000 by merging three large consumer centres, at the initiative of the line ministry. Its establishment is the result of a long-standing process of reforming institutional infrastructure with the aim of embracing consumer policy within one organization, so as to ensure its more effective implementation and financing. The Association is independent and financed from the budget.

The Association is headed by three bodies:

- assembly of members
- Board of Directors
- executive director.

Its main tasks are as follows:

- lobbying at the federal level;

- enforcement of rights before judicial authorities – representation of collective consumer interests;
- education;
- setting standards in providing consumer advisory services.

From all the aforementioned, it is important to point out that Germany is the best example of a civilian approach in consumer protection policy within the EU, where the Federal Ministry of Food, Agriculture and Consumer Protection (Bundesministerium für Ernährung, Landwirtschaft und Verbraucherschutz - BmELv) is responsible for consumer policy, consumer protection and general consumer information issues.

The protection of the economic interests of consumers in Germany is primarily exercised before the competent courts of general jurisdiction and special rules of civil and legal procedure. Consumer protection provisions are contained primarily in the German Civil Code (“BGB”) and the Act against Unfair Competition (“uWG”).

Germany has inherited the tradition of settling disputes by alternative methods, although we can not ignore the judicial way of resolving disputes. On the other hand, as we have seen, the impact and role of consumer protection organizations is of utmost importance.

The level of attention paid to protecting consumers in this country may be best illustrated by the fact that there is a Federal Ministry of Justice and Consumer Rights Protection (one of the most important in the German political and legal system).

Being an EU country, Germany applies all EU directives in this field. In addition, we can say that Germany is one of the biggest advocates of uncompromising norms that guarantee a higher degree of consumer rights protection.

It is important to point out that in this example it is easy to see how important consumer rights are for each country. All issues are solved both at the local, as well as at the provincial and federal level. The policy-makers’ awareness of the significance of this topic must be reflected so as to clearly demonstrate the necessity of multi-layered and multistage protection. In addition, the German example clearly shows awareness of the possibility of being a victim of consumer rights violation in almost any situation.

Existence of judicial and out-of-court system of consumer protection is of utmost importance. One form of such a dispute resolution does not exclude the other – quite on the contrary. A large number of judicial and quasi-judicial bodies have given Germany a leading role in the protection of consumer rights,

without confusing consumers or those holding judicial functions, as it is often complained about. A clearly regulated legal system that will envisage the existence of both protection systems and that provides specific legal powers in all types of procedures is an excellent legal ground for avoiding all possible conflicts of jurisdiction, both positive and negative ones.

Therefore, we believe that legal frameworks and good practices envisaged by the German consumer protection system must be introduced into our legal system. There needs to be protection from the lowest to the highest levels in the institutional hierarchy. It is also necessary to provide more efficient application of the provisions for judicial and out-of-court settlement of disputes, which will be discussed below.

6. Analysis of the consumer rights protection in Montenegro

In the second chapter of the study, four national programs adopted so far for the protection of consumers were analysed, as follows: the first National Consumer Protection Program for the period 2008-2010, adopted in 2008, the second National Consumer Protection Program for the period 2010-2012, adopted in 2010, the third National Consumer Protection Program for the period 2012-2015, adopted in 2012 and the fourth National Consumer Protection Program for 2015 - 2018, adopted in 2015. At the same time, the action plans that were also analyzed with the national programs for their implementation, and the work of the Commission for monitoring the implementation of annual programs or action plans were also taken into consideration.

When it comes to the strategic framework for consumer protection in Montenegro, the second chapter of the study contains the analysis of the Market Surveillance Strategy, as well as the work of the Coordination Body for Market Surveillance that was formed with the goal to monitor the implementation of this Strategy. When it comes to strategic documents at the level of local self-government, annual plans of activities aimed at raising the level of consumer protection in local self-government units were analyzed.

6.1. Compliance of Montenegrin regulations and policies with European Union regulations

Montenegrin consumer legislation is largely in line with the EU acquis. The basic laws in the field of consumer protection are the Law on Consumer Protection, as well as the Law on Consumer Credits, the Law on Tourism, the Law on Contractual Relations, the Law on General Product Safety, the Law on Market Inspection, the Law on Inspection Control and many others. The law is harmonized with the EU acquis relating to basic consumer rights (e.g. labelling of products and product prices, unfair commercial practices, etc.), directives governing the consumer rights protection system (e.g. judicial and administrative prohibitions, i.e. injunction), as well as directives regulating certain aspects of the consumers' contractual relations (e.g. distance selling, off-premises sales, unfair terms in consumer contracts, etc.), and which prescribe specific protection in these relationships exclusively to consumers, rather than other participants in the relationships that occur in the market. Also, this Law, together with the Law on Contractual Relations, completely transposed the Directive on liability for a defective product.⁶⁶ The Law on Consumer Protection has already transposed, partially or completely, the EU Directives relating to:

- protection of health and safety (general safety of products - partly because a special law on general safety has been adopted; packaging of dangerous substances);
- protection of economic interests (off-premises selling, distance selling, time-limited use of real estate – timesharing; price labelling on products, consumer credit and distance selling of financial services - are partly transposed with recommendations on specific regulations in this field;
- unfair commercial practices (false advertising and comparative advertising partly transposed with the recommendation to regulate the field of advertising by a special regulation; television broadcasting is partially transposed because there is a special regulation on this, etc.);
- consumer protection in contractual relations (some aspects of selling goods to consumers with certain guarantees, as well as unfair terms in consumer contracts);
- the right to compensation for damages (liability for a defective product in the part not regulated by the Law on Contractual Relations, compensation of damage caused by the product given for the repair), as well as court orders for the protection of consumers.

66 Government of Montenegro, Negotiating Position of Montenegro for the Intergovernmental Conference on the Accession of Montenegro to the European Union for Chapter 28, 2014, p. 3.

However, there is still a lack of logics and alignment. Also, for example there is an evident collision of the Law on Consumer Protection and the Law on Energy Production in terms of cutting off the users from the supply network. This is a problem primarily because electricity provider can cut off electricity supply to a consumer if the complaint is ongoing or if the consumer continues to pay uncontested part of the bill. However, this practice seems to happen often. Although the law authorized market inspection to deal with situations where consumers are cut off from electricity supply network, on the other hand, it has no competencies in cases of the electricity theft. Namely, if the Electric Power Company claims that the theft was committed, the inspection can not do anything. In this sense, the Law should be amended so as to prohibit to the Electric Power Company to establish the theft of electricity by itself, and oblige it to conduct the procedure before the court, or make suspect or prosecute the procedure, without adjudicating on whether there was a theft or not.

6.2. Consumer protection and activities of Montenegrin courts (comparative analysis with European case law) and individual and/or collective lawsuits

The judicial authority is obliged to pay special attention to consumer protection. A consumer whose right or interest has been violated may file a request to initiate proceedings for the prohibition of unfair terms in consumer contracts, the prohibition of unfair commercial practice or the procedure for confiscation of illegally acquired gains by individual lawsuits.

However, the Law on Consumer Protection recognizes the institute of *collective lawsuits*, which is one of the most important positive sides of this legislation. Namely, according to Article 118 of the Law on Consumer Protection, a trader who, by using unfair contractual terms, commercial practices or in any other way violates the rights of consumers determined by this or other law, thereby violating the collective interests of consumers, may be sued. This lawsuit may be filed by ministries and other state bodies dealing with the protection of consumer rights as well as non-governmental organizations or chambers and commercial associations of traders.

A collective lawsuit may be filed against an individual trader or group of traders in the same economic sector whose actions violate the rights of consumers set forth by this or other law, thereby violating the collective interests of consumers, against chamber and interest associations of traders which encourage such conduct or against the holder of a code of conduct using unfair business practices. Prior to filing a lawsuit for the protection of the collective interests

of consumers, an authorized person is obliged to warn in writing the person who they intend to sue that they will bring a collective lawsuit against them in case they do not stop threatening the collective consumer interests.⁶⁷ Procedures under a collective lawsuit will be conducted before a competent court of general jurisdiction. In other words, if an authorized person from Podgorica wishes to file a collective lawsuit against a trader from Podgorica for violation of consumer rights, the Basic Court in Podgorica will be competent. The value of the dispute is determined by the court, but it can not exceed 5,000 Euros⁶⁸.

Regardless of whether the proceedings before the court were conducted on the basis of collective or individual lawsuits, compliance with the law by the domestic courts must be at the highest level. Our courts should be informed about the level of tendencies by the European Union. We have seen in previous chapters how significant was the role of the Court in Luxembourg in the field of respecting consumer rights. We believe and hope that domestic courts will have similar role. They need support through the adoption of contemporary legal solutions.

When Montenegro becomes a member of the European Union, most of these regulations will be (in)directly applied before the domestic courts. But by then we have to rely on existing positive regulations. Montenegrin courts will also have the task of contributing to the creation of protection of consumer rights and disputes with an international element, in accordance with the Law on Private International Law.

6.3. Consumer protection in Montenegro: where are we at?

Although national consumer protection programs, as well as other strategic documents, define consumer protection as one of the priority areas for achieving a better quality of life for all citizens, and state that harmonization of consumer protection standards with European standards in Montenegro's EU integration process into the EU aiming at efficient consumer protection and the functioning of a market economy, the question arises as to how much the Montenegrin consumer society is really close to European standards.

The National Consumer Protection Program 2015-2018 states that significant results have been achieved in terms of the harmonization of legislation with the EU law, that a greater level of information and development of non-governmental organizations in this field has been achieved and that more efficient legal protection of consumers has been achieved in order to improve the quality

67 Article 120 paragraph 1 of the Law on Consumer Protection

68 Article 121 paragraph 5 of the law on Consumer Protection

of goods intended for consumers with appropriate safety standards, adequate access to the judiciary in the event of consumer disputes, and the exchange of information on dangerous products. The results were also achieved in terms of training and education of administrative capacities in the state administration in charge of creating and implementing a consumer protection policy.⁶⁹

However, if we compare these findings with the European Union's opinion on the Montenegrin progress in the field of consumer protection, the picture is somewhat different. Namely, the basic conclusion of the European Commission, when the progress of Montenegro in chapter 28 "Consumer and health protection", is: "Montenegro is **moderately prepared** on consumer and health protection. **Some progress** was made in this area. **However, substantial further alignment of legislation is needed in order to meet EU standards, particularly on quality and safety in both consumer protection and public health.**"⁷⁰

The Report also lists the areas in which further efforts are needed to improve consumer protection, such as:

- to enable the improvement and provision of cost-effectiveness of health promotion and disease prevention and achieve sustainable improvements in patient safety and quality of health care, including cross-sectoral cooperation - especially in the field of communicable diseases;
- to undertake activities for further substantive harmonization and implementation of legislation, to meet consumer protection standards and to improve citizens' awareness.⁷¹

In addition, the Report clearly states the following conclusions:

- Higher public awareness of the banking ombudsman and the possibility to seek out-of-court settlements, as is additional support for civil society organisations;
- On safety-related issues, further amendments are necessary to the law on general product safety and the law on consumer protection to ensure full alignment with the acquis. Administrative and enforcement capacity needs improving to ensure correct implementation;
- **As far as areas not related to product safety are concerned, it is necessary to continue to work on raising consumer awareness and improving access to information on consumer rights.**⁷²

69 National Consumer Protection Programme 2015 -2018, p. 4.

70 European Commission, Montenegro Progress Report, November 2016, 4.28. Chapter 28: Consumer and Health Protection, p. 90.

71 *Ibidem*, p. 90.

72 European Commission, Montenegro Progress Report, November 2016, 4.28. Chapter 28: Consumer and Health Protection, p. 90.

It is undeniable that the process of building a Montenegrin consumer protection system is still ongoing, and that, although significant progress has been made over the past 10 years, further efforts are needed **to improve consumer protection policy, consumer awareness and administrative capacity building for law enforcement**. In this respect, it is particularly important to further align legislation with European standards and directives, improve implementation of the law in practice, strengthen the mechanisms of out-of-court settlement of consumer disputes, and strengthen the non-governmental sector in this area.

In this regard, this section of the study gives an overview of the work of the competent institutions, by analysing the implementation of the law in practice and the reactions of citizens as consumers, in several sectors: trade, consumer protection in electronic purchasing, public services, with particular reference to the energy sector, telecommunications and utility services, food security, banking and financial services, the possibilities of out-of-court settlement of consumer disputes, and considering what has been done about consumer education and information and what are the effects in that field.

6.3.1. Trade

Trade is one of the most important segments of the economic system, which should make products and services available to consumers, with prices, quality and safety meeting the needs of consumers. The adoption of the Law on Consumer Protection, which came into force in July 2014 and is almost fully harmonized with EU directives, created good preconditions for consumer protection, by guaranteeing their rights.

However, although the Law on Consumer Protection is rather aligned with EU directives, the procedure for amending the existing Law on Consumer Protection which is ongoing has been pending for two years. Namely, during the implementation of the Law on Consumer Protection, from its entry into force, it was found that some articles or provisions were inadequate. Thus, Article 25 paragraph 2 of the Law on Consumer Protection states that the purchase of a product can be determined on the basis of the receipt, the sale contract, the guarantee or in another appropriate manner. However, it is not specified anywhere that the purchase right can be exercised without the possession of a fiscal receipt. Such inconsistency leaves room for misuse and not meeting legal obligations in the case of complaints by traders, whose only proof of purchase is a fiscal receipt.

Article 49 paragraph 1 of the Law on Consumer Protection stipulates that the trader is responsible for the non-conformity of the contracted goods within two years from the date of the transfer of the risk to the consumer, while par-

agraph 3 of the same Article defines that in case of selling the used goods, a shorter time limit in which the trader is liable for non-conformity can be set than the one referred to in paragraph 1 of the same Article, but no less than a year. Conclusion can be drawn that it is not clearly formulated what kind of used goods is referred to because, for example, used cars, technical and electronic devices, furniture, etc. can not have the same use-by date (one year) for a complaint, as for example, clothing, footwear etc.

If judged on the basis of a consumer complaint sent to CEZAP advise office, in general, since the adoption, i.e. the entry into force of the Law on Consumer Protection, as well as complaints addressed to CeMI and CEZAP during the implementation of the project “Improving capacities of CSOs and the system of consumer protection in Montenegro”,⁷³ the consumer protection is not at an enviable level.⁷⁴ On the contrary, over the past few years, there has been a tendency of increased number of consumer complaints, not because consumers are more aware, more informed about their rights, but because the goods and services market is constantly expanding.

If we analyze the data regarding the supervision of the implementation of laws regulating the field of trade, the Report on the implementation of the National Consumer Protection Program for the period July 2016 - June 2017 contains information that the market inspection carried out 28 inspection controls with no irregularities identified.⁷⁵ During this period, the Market Inspectorate performed a total of 9,019 inspections and found 2,567 irregularities, which were related to: price labelling for offered products, receipts, information on goods, conformity of products, misuse of the terms guarantee and guarantee card, product repairs or maintenance offers, availability of spare parts and service, documentation accompanying goods, special conditions of sale, sales facilities, complaint on the basis of the complaint of the product - price, notice of the place and manner of filing complaints, records on consumer complaints, complaint on the basis of the right to guarantee, public services, unfair trading practices, misleading trading practices, other obligations of the trader (required quantity, exact measure and quantity, packaging materials), product advertising etc. The subjects of supervision in 1,230 cases were requested to eliminate irregularities within a certain period. 1,099 decisions were passed, 1,310 misdemeanour orders

73 The project „Improving Capacities of CSOs and the system of consumer protection in Montenegro - PROTECT.MET“, implemented by CeMI in cooperation with the Center for Consumer Protection in Montenegro (CEZAP), the Montenegrin LGBTQ Association (Queer Montenegro) and the Network for the Affirmation of the European Integration Process (MAEIP). This project is funded by the European Union through a Instrument for Pre-Accession.

74 See section of consumer complaint situation, subsection 6.3.8.

75 Report on the implementation of the National Consumer Protection Program (2015-2018), for the period July 2016 - June 2017, p. 22.

were issued and 29 requests for initiation of misdemeanour procedure were filed for eliminating the identified irregularities.⁷⁶

It can be concluded that due to the traders who are only focused on the achievement of profit and insufficient human capacity for market surveillance by state authorities, the overall state of consumer protection is at an unsatisfactory level.

6.3.2. Consumer protection and electronic commerce

Rapid technological development and the ever-increasing use of technology have created opportunities for conducting business electronically. Electronic commerce involves the exchange of goods and services in the online world and this type of trade takes an increasingly important place in global economic trends, which is not the case in Montenegro. In addition to its numerous advantages (reducing the cost of product distribution, saving time ...), electronic commerce opens up a number of issues, including privacy, anonymity, protection against different types of scams, and each of these issues requires time for resolution and adequate legislation and supervision adapted to the new business concepts.

Considering the legislation that define the electronic commerce process in Montenegro, it is important to note that, in addition to the basic Law on Electronic Commerce (Official Gazette of the Republic of Montenegro 80/2004, Official Gazette of Montenegro 41/2010, 40/2011 and 56/2013), various aspects in this area are, to a lesser or greater extent, regulated by other laws, which are in line with normative practice in other countries, in particular members of the European Union. The latest amendments fully brought the law in line with the EU Directive on the individual legal aspects of information society services, in particular electronic commerce in the internal market (eCommerce Directive 200031/EC). Internet usage has changed consumer habits; they are now ready to buy and get information about products without prior physical contact. This concept brings great risks for Internet service users, regardless of whether it concerns a trade in goods and services or getting information through electronic marketing. Therefore, the Law on Consumer Protection deals with certain provisions of the distance contract. In addition to defining the concept of a distance contract, the Law on Consumer Protection also determines the exemption from the application (Article 61 and Article 62) and the restriction of electronic means, by which a distance contract can be concluded (Article 63). Prior to the conclusion of the contract, consumers are protected by the obligation of the trader to inform them about the most important contractual information (Article 64). Law on Consumer Protection also protects consumers after the conclusion of the distance contract, in such a way that Articles

⁷⁶ *Ibidem*, p. 7.

66-71 prescribe the right of consumers to unilaterally terminate the contract, as well as the trader's obligation to enforce the contract within the deadline. In accordance with the rules applicable to distance contracts, Articles 75 to 88 provide for rules on financial services contracts (prior notice, termination of contracts, settlement of disputes, etc.). When it comes to "unfair business practice", Article 117 of the Law recognizes aggressive business practice, such as traders contacting the consumers persistently and against their will, through means of distance communication. As an example of aggressive business practices, we can state frequent cases of consumers who address CEZAP due to frequent calls and harassment by certain companies that promote and sell their products - bedding, dishes, and various home appliances. According to the Law on Consumer Protection, aggressive business practice include: visiting the consumer in their home against their will, unless necessary for the purpose of enforcing the contractual obligation; contacting a consumer persistently and against their will by phone, fax, e-mail or other distant means of communication, unless it is in compliance with the regulations; directly contacting children to buy or make their parents buy them an advertised product; requesting payment of the product immediately or in instalments; returning and keeping a product not ordered by the consumer; directly informing consumers that, if they do not buy a product, the work and survival of the trader will be endangered; a false representation that the consumer has won or will win a prize or some other benefit, if that statement is not true. The rights of consumers in the distance trade (distance contracts) are protected by the provisions of the Law on Consumer Protection ("Official Gazette of Montenegro" 02/14), whereby the national legislation applies to companies that are registered and perform this activity in Montenegro.

Apart from the fact that Montenegrin companies are slow in choosing to change their business habits, a lack of consumer confidence presents a significant obstacle to the development of electronic business.

In order to raise consumer awareness, it is necessary to ensure that the business sector is informed about new obligations pertaining to e-commerce and provide consumers with information on safe online shopping. This includes information on indicators to identify a trusted trader or fraud, secure payment methods, and security rules that must be respected. A necessary precondition for the development of e-commerce is the elimination of consumer lack of confidence in this type of business, raising public awareness about its convenience and improving the quality of access, in order to gain as much trust and safety as possible in the e-commerce process on the one hand, and its development, on the other hand.

Regarding the supervision over the implementation of laws regulating the field of electronic commerce, if we consider the Report on the realization of the National Consumer Protection Program for the period from July 2016 to June 2017, according to the Law on Electronic Commerce, the inspection received 11 initiatives, of which four were in its jurisdiction. After the inspection control it was found that they were unfounded, while the remaining seven initiatives were not within the competence of this inspection.⁷⁷

Although the National Consumer Protection Program and its annual action plans envisaged strengthening the capacity of the inspection in the field of trade, representatives of the Administration for Inspection Affairs did not attend trainings and workshops aimed at improving capacities within the last reporting period (July 2016 - June 2017). The national program also envisaged the education of inspectors in the field of electronic commerce aimed at effective protection of consumers. However, representatives of the Administration for Inspection Affairs did not attend trainings/workshops aimed at improving the knowledge of inspectors in this area within the last reporting period.⁷⁸ Also, during the reporting period, cooperation with the relevant institutions at the national and international level was not achieved, which is a significant measure in the area of strengthening the capacity of the inspection in the field of trade.⁷⁹

6.3.3. Public services (energy production, telecommunications and postal services; utility services)

The **public interest** represents a national or general interest aimed at all citizens, unlike private or personal interests, which are primarily focused on the needs and desires of individuals. The basic characteristic of these services, regardless of who provides them (public or private sector) is a **monopoly** on services imposed by providers. Under the conditions of a free market, consumers, buyers of goods and/or recipients of services are enabled to actively participate in the market reproduction. However, when it comes to services of public interest, consumers most often have a passive role, i.e. the role that prevents them from exercising consumer right - **the right to choose**. **Public services** include: distribution and supply of electricity, gas, heat and water, treatment and disposal of waste water, maintenance of cleanliness in cities and other settlements, disposal of municipal waste, maintenance of cemeteries and burial, smokers' and other utility services, chimney sweeping services, passenger transport, electronic communications services, postal and other services.

77 Report on the implementation of the National Consumer Protection Program (2015-2018), from July 2016 - June 2017, p. 22.

78 Ibidem, p. 22

79 Ibidem, p. 22

The consumer rights in the field of public services are not sufficiently respected. This is due to an insufficient awareness of consumers about their rights (inadequate number of promotional campaigns, insufficient number of educational programs), lack of cooperation between providers of public services among themselves and with consumer organizations, regulators, inadequate application of the law by public service providers, inefficient courts etc. In this part, it is necessary to intensify cooperation with public service providers, since the position of consumers, with regard to this specific issue, is not at a satisfactory level. This is a process that needs continuous work, because, first and foremost, consumers must be familiar with their rights, in order to recognize when they are threatened and react in time. Consumers must also be aware of the fact that they are the main actors on the market and that the level of their protection often depends on their activity and persistence.

Regarding the laws that regulate the field of consumer protection and public services, it can be concluded that they are differently applied or not applied at all, or rather that they are **in conflict**. This primarily refers to the relationship between sectoral laws, in particular in relation to the Law on Consumer Protection. Therefore, it is necessary to work more on the application, monitoring, amendments of existing laws and by-laws, in order to ensure primarily the legislative framework for adequate protection. The Law on Consumer Protection provides an opportunity for a high level of consumer protection in Montenegro. However, it can be noted that these opportunities are not fully utilized. The reasons for this are consumer awareness and knowledge of their rights on the market which are still not sufficiently developed, as well as an unequal commitment of the competent authorities to control the enforcement of laws in different areas crucial for consumer protection.

Energy production - Safe electricity supply at affordable prices and under fair conditions, as well as efficient use of electricity, are or should be the primary goal of all actors in the energy sector. It is necessary to pay special attention to the issues of researching and using energy resources, transforming energy, transmission/transport and supply of energy consumers within the framework of specific technical-economic, legal and regulatory and institutional organizational conditions of the state, in order to provide energy services of adequate quality and safe supply; in the context of socially acceptable socio-economic conditions and environmental protection requirements.

The Law on Energy Production should provide: safe, secure and quality supply of electricity to consumers at realistic prices, construction of an efficient competitive and financially sustainable energy sector; fostering competition in the energy production market by respecting the principles of non-discrimination, objectivity and transparency; increasing energy efficiency and supporting

greater exploitation of renewable energy sources, as well as protecting the environment from the negative effects of activities in the field energy production. Providing sufficient amount of energy needed for the life and work of citizens and the business and development of businesses and their supply in a safe, secure, reliable and high-quality way, as well as energy development are of public interest.⁸⁰

From the point of view of consumer rights, the laws in this area are directly opposed. Thus, when it comes to the process of cutting of the electricity, the provisions of the Law on Energy Production are contrary to the Law on Consumer Protection, while both laws are in conflict with the Constitution, which stipulates that citizens should not be denied basic human rights, including the right to water and electricity. That is the case with cutting off electricity supply.⁸¹ This attitude is not the desire to incur damage to the suppliers, but rather an intention to emphasize that there are mechanisms in our legal order for sanctioning irresponsible electricity consumers. The measures which are currently implemented are inadequate to democratic standards and detrimental to human dignity. It should also be noted that one of the recommendations of the Energy Development Strategy until 2030 is the provision of social protection for endangered electricity customers.

It is important once again to point out that the *Law on Energy Production stipulates that the supplier must not cut off the electricity if the buyer pays the contested bills and makes a complaint for the contested bills.* The question is whether the supplier is entitled to cut off supply if there is an outdated debt? *The Supreme Court judgment gave the advantage to the consumer, who is protected in the event of an outdated debt. In this way it is made known to the supplier that it must use the means to protect their rights in a timely manner.*

In addition, the buyer is entitled to: 1) chose the supplier; 2) make an objection regarding the electricity bill; 3) complain in case of failure to fulfill obligations from the contract on electricity supply; 4) appeal against the decision of the supplier due to the restriction or suspension of the delivery of electricity; 5) appeal against the decision of the supplier in case they fail to meet the minimum quality of electricity supply⁸². We have to pose the question - *how can there be choice if there are no alternatives?*

A large number of consumers in Montenegro did not conclude contracts for providing services with EPCG (the only provider of this type of service in Montenegro), which represents a breach of the Law on Consumer Protection. Public service providers, in particular EPCG, abuse their monopoly position

80 Article 4 paragraph 1 of the Law on Energy Production.

81 Article 6 of the Constitution of Montenegro

82 General conditions for electricity supply, Article 6 paragraph 1

by threatening to cut off consumers from the electricity supply network if they fail to settle their obligations within the deadline specified by the provider. At the same time, consumers complain about the amount of monthly bills, and there is no second instance authority to appeal. This approach is in direct contradiction with the Constitution of Montenegro and Article 6 of the European Convention on Human Rights. Also, it is often the case that Electric Power Company of Montenegro charges the consumer for unauthorized use of electricity, without having evidence that the offense was committed, which also violates the aforementioned provisions of the Constitution of Montenegro and the European Convention. For this reason, due to the implementation of the consumer protection policy, the regulatory authorities should carry out continuous monitoring of all elements that affect the safety (reliability) and quality of delivery and the price of electricity.

The **Energy Regulatory Agency** is an independent regulatory body, which performs public authorizations in our country in accordance with the Law on Energy Production⁸³. Therefore, the Agency, as a regulator, is obliged to inform the public transparently about its work - through media, website, etc. All general acts of the Agency must be in accordance with the law, by-laws and international standards. We believe that in terms of the consumer protection, the policy of regulators in the energy sector should focus on:

- Concrete support to consumers, rather than the relationship the service provider - the consumer;
- Support to individual consumers, rather than orientation towards general support for consumers as a social category;
- Prevention any exploitation of consumers;
- Fulfillment of other indirect consumer protection objectives such as:
 1. Safety
 2. Reliability
 3. Legality

Regulatory body in the energy sector, in order to ensure the above mentioned orientations should:

- Ensure the **implementation of the legislation regulating the consumer protection policy, since the main problem is the disrespect of the law by the service provider;**
- Provide a consumer protection plan for a specific time period (short-term and long-term);
- Provide records of specific activities related to consumer protection.

⁸³ Article 27 of the Law on Energy Production

Unfortunately, we find that the authorities of the Regulatory Agency are limited, which is proved by significantly lower number of complaints submitted by citizens in 2017 compared to previous periods. In 2017 there were only twenty complaints, while in the previous years this number was several times higher.

Telecommunications - By proclaiming the Law on Telecommunications from 2000, and by the entry into force of the Law on Electronic Communications (“Official Gazette of Montenegro” 40/2013), Montenegro expressed to some extent the real intention to demonopolize the turn to a market-oriented economy in the electronic communications sector.

However, one must not forget the fact that the long-standing state of the oligopoly, which made the Montenegrin consumer completely disadvantaged, leaves the consequences, which can not be eliminated at the same pace. Competitive struggle for each individual user, as a trend, and not as a single phenomenon, is something to be happy about. This disproportion of the possible and real place and role in the market of electronic communications services makes Montenegrin consumers speechless. It can be noted that the users of the electronic communications network services are still not sufficiently aware and educated about their rights and their place and role in the market, i.e. that they can, in the first place and in their favour, grab all the benefits currently offered to them on the market.

The aim of establishing an “Independent Regulator”, i.e. the Telecommunications Agency, was to introduce a meritorious arbitrator into the telecommunications market.

Measures and actions undertaken by the Telecommunications Agency are insufficient if no significant actions are initiated both in the field of legislation and regulations.

In the following period, the overall goal is to improve the quality of public electronic communications services, and to monitor the quality parameters of all services and publish comparative data on measurements. Providing complete information on prices and tariffs of electronic communications services and changes in offers and prices of services of electronic communications operators, and preventing the activities of operators in introducing services for which the legal requirements are not fulfilled, in terms of informing users of the content of the service, the price and changing conditions for the provision of services.

Utility services - Municipal services (also referred to as utility services and/or activities), such as water supply, sewage, waste disposal, are traditionally under the jurisdiction of municipalities and still represent some of the most important functions of municipalities. Municipal services should also be considered as

services of general economic interest; therefore, the activities listed as municipal services must be clearly defined in the relevant legislation⁸⁴, especially with regard to their separation from utility activities (twelve of them).

The national legislative framework usually consists of systemic regulations that define the category of public utility services and basic conditions for their provision, as well as sectoral regulations of importance for the organization and provision of individual services. However, the regulation of certain conditions for the provision of services, organization and functioning of utility companies is fully under the authority of local self-government. When it comes to sectoral legislation, there is a need to harmonize certain parts, in particular the decisions of local self-government to create legal conditions for the realization of certain consumer rights in the context of utility services. A significant example is the question of prescribing the obligation to conclude a contract with consumers. Therefore, an insufficiently transparent legal framework does not allow an adequate level of consumer awareness of their rights and obligations in relation to some utility services. There are many open questions regarding the exercise of consumer rights in the area of municipal services, and as already mentioned, the general conditions for the provision of these services are an integral part of the contract between the Public Utility Company (PUC) and consumers (end-users) and are governed by the provisions of the local self-government regulations. The problem arises when these conditions are a source of disrespect of consumer protection rules and may include violations which are part of the prohibition of unfair provisions in an agreement on the provision of services of general economic interest. Consequently, there is a problem regarding the legal control over these conditions, since these concern mostly local regulations. There is also an evident lack of awareness at the decision-making level, of representatives of local authorities and the PUC about the content of consumer rights.

At the institutional level, the situation is rather standardized: the local self-government and the PUC operate within their competencies and, in accordance with numerous legal acts and policies, make it impossible to recognize the issue of consumer protection at present as an important aspect in defining the local public policy regulatory framework. In the first place, when it comes to this problem, it should be pointed out that the existing procedure of public debate on the draft regulations and local governments or acts adopted by the PUC is not sufficiently transparent and inclusive.

Providing utility services is a rather delicate task for providers. It reflects the fact that the normative framework for their activities is addressed by provisions

84 See the Law on Local Self-Government ("Official Gazette of Montenegro" 42-2003, 28/2004, 75/2005, 13/2006, 88/2009, 3/2010, 38/2012, 10/2014) and Law on Utility Services ("Official Gazette of Montenegro" 55 17/08/2016, 74/16)

of a wide range of laws and by-laws at central level, as well as regulations at local level, while outdated infrastructure and funding problems, create a much more complex environment of public tasks entrusted to them.

Likewise, the work of the PUC should be aligned with the conditions imposed by the consumer protection legislation. In this respect, written contracts and adequate provision of information to consumers, account and measurement issues, discrimination and the possibility of terminating a service contract are some of the most common challenges. Also, the formation of prices and/or tariffs for utility services is done in a closed circle, between local authorities and the PUC. Consumers are not informed on time, they are not allowed to participate in price formation procedures, nor are they aware of the real scope of rights and obligations that they have as consumers, i.e. users of municipal services.

Thus, it can be concluded that there is a lack of a two-way communication between citizens and local administration, that citizens are not sufficiently familiar with their rights and obligations, that they often lose their way in the maze of the municipal system of accountability in a wide range of services of general interest to citizens provided by local self-government provides, directly or through municipal, public utility companies.

6.3.4. Food safety

Everyday changes in science and technology, changes in legislation and current socio-economic and socio-demographic reality have a significant impact on food we buy today. The development of the national food safety system is very important for protecting the health and safety of consumers. Consumers are worried with reason about the quality and safety of food, and therefore require greater transparency in the food chain and more information on the different qualitative characteristics of food (for example: nutritional value, origin, method of production, etc.). The global food trade environment imposes significant obligations, especially in the part of the food control system, and the implementation of risk-based food control strategies. As well as specific safety rules regarding animal feed, including placing on the market, additives, unauthorized supplements in animal feed and requirements for specific categories of animal feed.

The EU applies an integrated “farm-to-fork” approach, which includes three mutually supporting parts:

1. Food safety (rules on hygiene standards hygiene rules for the production and distribution of foodstuffs, official controls and mechanisms for ensuring food safety);
2. Veterinary policy (rules on animals and the distribution of products of

- animal origin, animal health, official control of imports from third world countries and monitoring of animal migration);
3. Phytosanitary control (rules on control of harmful organisms in plants and plant materials, placement of plant protection products, seeds and planting material on the market, control of residues of pesticides in products of plant origin).

Appropriate implementation of the EU “from farm to fork” strategy can only be achieved through the appropriate cooperation of state institutions and consumer protection organizations in creating a legal and regulatory environment, monitoring production and food trade, monitoring the quality and safety of food, ensuring safe and appropriate storage, packaging and labelling food products, implementing effective education and informing consumers.

Regulating food safety and quality aims to protect consumers from insecure, low-quality and incorrect labelling of food products, as well as to build consumer confidence in the surveillance system.

The basic elements of the EU Strategy for Food Safety and Quality are transposed and implemented in Montenegro. The Government of Montenegro adopted the Strategy for Food Safety and revised the Law on Food Safety, which defines the core of the institutional system responsible for the food safety and quality policy in Montenegro. Namely, the Ministry of Agriculture and Rural Development of Montenegro is in charge of implementing and proposing policies that regulate food safety, including the objectives of sustainable resource management, a stable and acceptable supply of safe food, with the aim of providing a decent living standard for the rural population. The Directorate for Food Safety, Veterinary and Phytosanitary Affairs, which operates as an internal department of the Ministry of Agriculture and Rural Development, is the main institution responsible for the implementation of official food safety controls: monitoring of business conduct in the process of production, processing and distribution of food and animal feed. This institution has been awarded an exceptional function to educate, inform consumers and provide them with consultations in the field of food safety and quality. When it comes to laboratories, the Phytosanitary Laboratory, the Specialist Veterinary Laboratory and the Centre for Ecotoxicological Testing in Montenegro are responsible for laboratory analysis of food products, in order to ensure the safety of food products, animal feed, products of plant origin.

When the negotiations with the European Union started and the benchmarks for opening negotiations in Chapter 12 (“Food Safety, Veterinary and Phytosanitary Policy”), the need for further harmonization of the legal framework for full transposition and harmonization with EU regulations was imposed,

which regulated the area food safety, in particular areas of placing food and feed on the market (food and feed hygiene), food safety rules in terms of food information that must be available to the consumer, labelling of food, additives, enzymes, materials that come in contact with food, fast frozen food, new food etc. as well as specific rules for the safety of animal feed, including placing on the market, additives, unauthorized supplements in animal feed and requirements for special categories of animal feed (medicated foods).⁸⁵

The Administration of Inspection Affairs with the Ministry of Economy or the Ministry of Health participated in the preparation of bylaws for the implementation of the Law on General Product Safety, the Law on Product Surveillance on the Market and the Law on Technical Requirements for Products and Conformity Assessment, including: Decree on determining the groups of products under surveillance on the market, Regulation on the exchange of information on dangerous products, Rulebook on the list of standards in the field of general product safety, Rulebook on the content of the notification of a dangerous product and a product that presents a serious risk, Directive on the safety of toys (Directive 2009/48 / EC), Rulebook on Radio Equipment and Telecommunications Terminal Equipment, Rulebook on Technical Requirements for Crystal Glass, Rulebook on Marking and Labelling of Textile Products, Rulebook on the Labelling footwear, Rulebook on Personal Protection Equipment, Rulebook on simple pressure vessels, Rulebook on Electromagnetic Compatibility.⁸⁶

When it comes to implementing the regulations governing product safety and market surveillance, the competent Inspections of the Administration for Inspection Affairs continuously monitor the application of regulations governing safety and market surveillance in accordance with the annual programmes for product market surveillance programs, including the acting upon notifications on dangerous goods on the market.⁸⁷ Namely, the Administration for Inspection Affairs continued to monitor the implementation of the Law on Food Safety, the Law on Genetically Modified Organisms, the Law on Planting Material, the Law on Seed Material of Agricultural Plants and the Law on Agriculture in the field of consumer protection through competent inspections. Since 1 June 2017, the Directorate for Food Safety, Veterinary and Phytosanitary Affairs as well as 13 sanitary inspectors in charge of supervision took over the supervision of food safety.

Thus, in the period from July 2016 to June 2017, the Health and Sanitary Inspectorate performed a total of 2,789 inspections in the area of consumer protection. Inspectors, in addition to regular inspections in the field of food safety, also

85 More information available in: National Consumer Protection Programme 2015-2018.

86 *Ibidem*.

87 National Consumer Protection Programme 2015-2018.

carried out inspections based on submitted initiatives and consumer applications. In total, 2,789 inspections were carried out, in which 254 irregularities were established. The subjects of the supervision in 197 cases were ordered to eliminate the irregularity within a certain period. The inspectors issued 48 decisions for eliminating the identified irregularities. In addition, 642 misdemeanour warrants were issued.⁸⁸

During the same reporting period, the Phytosanitary Inspectorate performed a total of 906 inspections in the area of consumer protection. In order to eliminate the identified irregularities related to the declaration and labelling of products, the inspectors in 18 cases pronounced indication measures and issued 52 decisions. 36 misdemeanour orders were issued and six requests for initiating misdemeanour procedure were filed.⁸⁹

The Progress Report for Montenegro states that the number of inspections (safety and non-safety related) performed by the Administration for Inspection Affairs increased again, as did the number of irregularities found, with 275 types of dangerous products identified (275).⁹⁰

It should be noted that the EU has one of the highest standards of food safety in the world. A key instrument to ensure cross-border information tracking, for rapid response when identifying risks to public health in the food chain, is RASFF - the Rapid Alert System for Food and Feed. Since 1979, RASFF has been ensuring efficient dissemination of information among its members and continuously provides services to ensure that urgent notifications are received, and are responded collectively and efficiently. The Rapid Alert System for Food and Feed (RASFF) has been established to provide authorities in charge of control of food with means for information exchange on the measures taken to address serious food risks. This information exchange helps Member States to act more quickly and in a coordinated way in order to respond to the health threat posed by food for people or feed.

Food safety is an essential, health issue for all countries. The extent of the sensitivity of this chapter in consumer protection is demonstrated by not so rare cases of withdrawal of whole batches of dangerous products (children's toys, baby cots...) from the market in the recent years.

Consumers also recognize the increasing importance of the way food is produced, i.e. the production process has become a dimension of quality, even when there is no immediate impact on the taste or health of the product. This

88 Report on the implementation of the National Consumer Protection Programme (2015-2018), from July 2016 to June 2017, p. 20.

89 *Ibidem*, p. 20.

90 European Commission, Montenegro Progress Report, November 2016, 4.28. Chapter 28: Consumer and Health Protection, p. 90.

quality dimension includes organic production, production taking into account the welfare of animals, and the production of food without the use of GMOs.

When it comes to safety and quality of food, consumer complaints are mostly related to: poor product quality, lack of hygiene standards in stores, inadequate storage of products (e.g. certain types of dairy products are not stored at prescribed temperatures), expired use-by dates etc. Food safety is an essential health issue for all countries. Illnesses transmitted by food can significantly affect human health and well-being, but also have economic consequences for individuals, families, communities, businesses and countries. Collecting evidence-based data provides insight to civil society organizations in Montenegro in perceptions of consumers, how they see the safety and quality of food, and why they choose those specific food products.

In order to have a better understanding of the concept of food safety and quality from the consumer point of view, CEZAP conducted a consumer survey in September 2017. The choice of food and quality perceptions by consumers is important, both in terms of advocating for legislative changes, and terms of guidelines related to educating and informing consumers about the safety and quality of food in Montenegro. By analyzing the processed data, it can be concluded that the surveyed consumers are not sufficiently informed in the field of food safety and quality. Also, they are not satisfied with the level of safety and quality of food in our country and do not have enough confidence in the competent state institutions regarding the provision of information on the situation in this area.

6.3.5. Educating and informing consumers

Consumer protection policy is effective only if it is based on the principles that each consumer must receive information, advice and appropriate legal aid in order to exercise their rights guaranteed by law. Responsible, protected and active consumers require better quality of goods and services and, as such, present key actors in the market.

However, the Montenegrin market is characterized by different consumers. The most common problems that arise in this area are: **low level of awareness of citizens on consumer protection issues, inability to understand contractual provisions, especially in the field of telecommunications, financial services, energy, lack of or inadequate price and additional costs labelling, incomplete product labelling, lack of instructions and warnings, misunderstanding of product conformity provisions and vague terms of warranty, unfair commercial practices and misleading advertising, aggressive sales methods, etc.**

The Law on Consumer Protection sets the institutional system of consumer

education: consumer education is carried out by educational institutions, consumer organizations and public information' means. Therefore, the prescribed institutional framework for consumer education does not correspond to the current situation. Consumer protection organizations in Montenegro provide consumers with education, information and consultation services: they publish information materials, implement educational programs, and provide consultation online, by phone, as well as in person. However, the National Consumer Protection Program allocates some of the activities related to consumer education to state institutions. This leads to a situation where state institutions and NGOs are doing a double job in providing consumer education services. Although at first glance it seems like doing a double job, it's far from the real situation. The function of educating and informing consumers in an institutional consumer protection system is not clearly defined. Jurisdiction and responsibility in this field are not clearly defined. Although there is noticeable progress in the field of education, more efforts have been put into informing the consumers.

Institutions and organizations active in protecting consumers carry out activities aimed at raising public awareness of citizens. However, citizens' awareness of consumer rights is far from satisfactory. Also, the awareness of citizens differs greatly, depending on the region of Montenegro. Thus, we can say that citizens from the central and southern part of Montenegro are more aware of their consumer rights, while the northern part is largely lagging behind. The fact that a large part of the citizens of the northern region does not even know the meaning of the consumer rights concept shows how huge this gap is.

When it comes to local self-government, the Law on Amendments to the Law on Local Self-Government ("Official Gazette of Montenegro" 88/09) found that the municipality shall provide conditions for consumer protection within the scope of its competence. In order to ensure the implementation of this norm in a systematic manner, the National Consumer Protection Program for the period 2015-2018 defined the obligation of local self-governments to determine the competence to provide conditions for consumer protection by decisions on the organization and manner of work of local government bodies, i.e. in the acts on internal job classification in the competent local government body. This would ensure that the description of the job of a particular local official determines the obligation for the implementation of this legal commitment. It is also necessary to include communication with consumers in the description of the job of certain person(s), at the level of the utility services provider (utility companies) The National Consumer Protection Program also stipulates that in the field of consumer information, it is necessary to improve the service information that are published on the websites of utility companies regarding planned and unplanned interruptions in the provision of utility services. The

competent authorities often single out the service of the Capital “System 48”, which guarantees that citizens/consumers will receive response within 48 hours, as an example of good practice in the field of providing consumer information.

Pursuant to the obligations of the National Consumer Protection Program for the period 2015-2018, in Nikšić, in partnership with Tehnopolis and the Ministry of Economy, an advice office has been open to provide citizens with all the necessary information on their consumer rights. However, similar projects have not been implemented in Danilovgrad, Rožaje, Šavnik, Kotor, Petnjica, Cetinje and Kolašin, while in Andrijevica the premises for the Consumer Advice and Protection Office have been provided.⁹¹

In line with the rapid changes in the market, Montenegrin consumers need continuous education and provision of information. Bearing in mind the degree of their lack of information and knowledge about this area, it is necessary to organize different thematic meetings, educational programs and inform the public through brochures and other informative materials about the importance of consumer protection, through educating consumers about their rights and traders about their obligations, in order to raise the general level of knowledge on consumer protection in Montenegro, with a special emphasis on the northern region. It is especially important to strengthen the role of the media, which still do not recognize consumer protection as an area of great social significance.

6.3.6. Banking and financial services

Today’s modern and dynamic market offers a range of new products and services on a daily basis, for which consumers need permanent education and information. The entry into force of the Law on Consumer Credits (Official Gazette of the Republic of Montenegro 35 of 23 July 2013) created the basis for long-term and better quality solution of consumer protection issues - users of consumer credits. However, given the dynamics of the development of the financial and banking market in Montenegro, and consequently a growing number of creditors who are placing new credit products, the consumer protection policy needs to constantly improve in order to enable consumers to achieve basic rights related to right on information, protection of economic interests and efficient resolution of consumer disputes. The Central Bank of Montenegro monitors the implementation of the Law on Consumer Credits through the control of the compliance of the banks’ and microcredit financial institutions’ operations, to which the Central Bank issued a license to operate in the segment of consumer crediting, as well as through acting upon the submitted consumer complaints.

⁹¹ Report on the implementation of the National Consumer Protection Programme (2015-2018), from July 2016 to June 2017, p. 14.

Thus, for example, the Central Bank, found in the direct control procedure that five banks need to improve the level of alignment of their business operations with the provisions of the Law on Consumer Credits, in terms of:

- the level of consumer information at the pre-contract phase;
- essential elements of the contract;
- calculated fees in the event of early credit repayment;
- contents of the report in the form of permitted overdraft;
- calculation and presentation of the EIR by further regulated Decision on the unique method of calculation and presentation of the effective interest rate on credits and deposits).⁹²

Pursuant to the Report on the Implementation of the National Consumer Protection Program (2015-2018) for the period July 2016 - June 2017, the Central Bank ordered the elimination of identified irregularities and undertook activities aimed at initiating misdemeanour procedures against banks and their responsible persons before the competent court for offenses.

Also, in order to act preventively, and based on the importance of consumer information and legal requirements that consumers must receive standardized information in the advertising stage necessary to assess whether the credit product is adapted to the financial condition of the consumer, the Central Bank has monitored the content of advertisements created by banks related to the consumer credit agreement, which was available to consumers in the media and on the banks' website.⁹³

Despite these activities, the question is to what extent are consumers, users of banking and financial services in Montenegro, really protected.

Currently, in individual areas which include financial services, Montenegro has achieved a different degree of harmonization with the European legislation and its application. Continuous harmonization of existing legislative solutions with the relevant EU regulations aimed at creating a high quality institutional and regulatory framework and satisfactory level of information should result in financially literate consumers who make economically justified decisions, which is not the case yet.

The usual means of securing for consumer credits are designed so that the bank can at any time charge a debt in case the consumer fails to repay the instalments on time.

92 Decision on Unique Method of Calculation and Presentation of the Effective Interest Rate on Loans and Deposits "Official Gazette of Montenegro" 51/13 and 52/14.

93 Report on the implementation of the National Consumer Protection Program (2015-2018), for the period July 2016 - June 2017, p. 39

Administrative ban on earnings, blank bill of exchange signed by the credit user or investments in movable or immovable items most commonly represent a guarantee for repayment of consumer credit. Therefore, consumers should pay special attention to what kind of guarantee they accept. Due to consumer complaints related to financial and banking services, the number of consumer complaints grows each year. This is particularly important considering that there is no organization in Montenegro (civil sector) which primarily deals with the protection of consumers' rights, users of financial services, except for the institution of the Banking Ombudsman.⁹⁴

In the past five years, we had the opportunity to see the complexity of this area through the procedure initiated by CEZAP before the Basic Court in Podgorica in the case against Hypo Alpe Adria Bank (present Addiko) on behalf of 330 damaged clients, Swiss franc credit users (CHF). A number of initiatives, which the lawyer team submitted to the Committee on Economy, Finance and Budget on several occasions, finally resulted in the adoption of the Law on Conversion of Credits from CHF into EUR. Although the Law has been adopted, the main problem is its application, i.e. violation in practice.

Therefore, further efforts are needed to inform citizens about financial and banking services, as users of financial services have the right to clear, accurate and understandable information before taking a credit or when undertaking some other monetary investment. Similarly, users must have access to efficient and rapid mechanisms to protect their consumer rights with financial education that allows them to make long-term financial plans and decisions.

6.3.7. Out-of-court settlement of consumer disputes

The out-of-court settlement of consumer disputes between consumers and traders has been available to Montenegrin citizens for almost nine years, through the Arbitration Committee, which operates in the Chamber of Economy.

The Arbitration Committee for the settlement of consumer disputes acts on the basis of the Law on Consumer Protection and the Rulebook on Arbitration Committee, as an independent body that resolves disputes between consumers and traders in an out-of-court procedure with the aim of providing consumers with cheaper and faster protection of rights. The dispute before the Arbitration Committee is initiated by the consumer, while in cases of protection of the collective interests of consumers, the dispute can also be initiated by the consumer organization.

⁹⁴ Annual reports on the work of the Banking Ombudsman are available on the website: <http://www.bankarskiombudsman.org/index.php?mn1=saopstenja&mn2=izvjestaji>

A necessary condition for the commencement of the proceedings is the existence of evidence that the consumer has previously tried to peacefully settle the dispute with the trader by means of a complaint. If the trader notifies the consumer that they do not accept the request to exercise the right or fail to respond to this request within 8 days, the consumer may initiate a dispute by submitting a lawsuit to the Arbitration Committee. If the complaint is rejected or the lawsuit is inadmissible, or the Prosecutor fails to complete or correct it within a certain time, the complaint shall be dismissed. The Council's decision has the force of final court judgment and is enforceable if the trader declares that they accept the Committee's decision as obligatory before or after the commencement of the proceedings. If they declare that they do not accept it, the Council makes a recommendation. No appeal or request for annulment or other remedy can be filed against the non-binding decisions of the Council. The lawsuit shall be rejected if it is found that the case is unsuitable for deciding in the proceedings before the Committee.

As for the costs of the proceedings, each party in the proceedings pays its costs (representation expenses, travel expenses, etc).⁹⁵ Exceptionally, if the trader loses the dispute, they are obliged to compensate the consumer for the costs they had in the proceedings. If the lawsuit is found to be an abuse of rights, the Committee will order the Prosecutor to pay a EUR 20 fee. However, compared to ordinary court proceedings, the proceedings before the Arbitration Committee are cheaper, faster, more direct, less formal, and as such are preferable for disputes with lower cost, which are typical for consumers and traders. The proceedings shall not deprive any party of the right to subsequently make use of the possibility of resolving disputes before the Court.

Our experience and experience of the Montenegrin Chamber of Economy demonstrates the low level of citizens' interest in solving disputes through the Arbitration Committee. According to available data for 2015, there were only 15 requests sent to this Committee. "The procedures that have been conducted so far before the Committee for out-of-court settlement of consumer disputes at the Montenegrin Chamber of Economy have been solved in most cases in favour of consumers. In practice, before convening the Council and ruling on a lawsuit, consumers often conclude an agreement with the trader".⁹⁶ Certainly, the key reason for the low citizens' interest in resolving disputes through the Arbitration Committee is a result of insufficient information of the citizens themselves on the protection of their consumer rights, as well as their inadequate knowledge about the availability of this mechanism.

⁹⁵ Article 151 of the Law on Consumer Protection.

⁹⁶ National Consumer Protection Programme 2015 – 2018.

However, the Arbitration Committee has not been operating since May 2016. It was dismissed due to problems in defining compensation for members of the Dispute Settlement Council. Namely, the Law on Consumer Protection was passed in 2014 and the members were paid according to the Government Decree on Expenditure on Civil Servants and State Employees from 2011. Since this regulation dates back to the period before the Law on Consumer Protection was passed, the Chamber of Economy interlocutors considered that the competent Ministry (Ministry of Economy) should initiate the adoption of a new decree, which would be in line with the provisions of the Law, in order to create the conditions for smooth functioning of the Arbitration Committee.⁹⁷ Since May 2016, a call for a new council was advertised, but there were no interested candidates.

In addition, the National Consumer Protection Program 2015-2018 states that the planned activities are aimed at promoting the out-of-court settlement of consumer disputes, and that in order to promote and improve the work of the Committee for out-of-court settlement of consumer disputes, the Chamber of Economy of Montenegro will promote the work and the role of the Committee in the media, as well as the importance of this body with the aim of protecting consumers' rights. Also, the National Program envisaged training for arbitrators, while the Chamber of Economy of Montenegro was supposed to work through the work of the Committee of the Association of Agriculture and Food Industry on raising awareness of food safety, which must be provided at the national and international level. All of these activities are not continuously implemented, since the Committee has not functioned since May 2016.

The authors of this study believe that the reasons why the Committee never took off are the following:

- The Committee's decisions are not binding;
- The positive outcome of the dispute requires the approval of both parties. We are witnesses that traders and service providers generally do not accept compromise, or reaching an agreement with consumers. Otherwise, consumer complaints would be resolved in the first communication with the trader;
- The compensation for the work of the members of the Council who handle cases is not ensured. A big problem is that the Council is primarily formed upon a consumer complaint because members of the Committee are not interested in taking part in proceedings before the Committee due to non-payment of the bonus and compensation for expenses in the work of the Council.

⁹⁷ Interview with Miss Ljiljanom Filipović, Deputy President of the Chamber of Economy, held on 7 December 2017.

Bearing in mind the importance of the out-of-court settlement of disputes, it is necessary to amend the Law on Consumer Protection as soon as possible in order to make the work of the Arbitration Committee functional and efficient.

6.3.8. Can Montenegrin consumer be considered responsible?

Consumer protection policy is effective only if it is based on the principles that each consumer must receive information, advice and appropriate legal aid in order to exercise their rights guaranteed by law. Protected consumers should enjoy quality services, including adequate and transparent prices, good quality of services, user-friendly information, including providing advice in the field of services, etc. Responsible, protected and active consumers require better quality of goods and services and, as such, represent key actors in the market.

Apart from the question about how much are Montenegrin consumers informed and educated about their consumer rights, there is also a question about how much are Montenegrin consumers responsible. Also, it is still uncertain how much a responsible consumer in Montenegro can really achieve the protection of their consumer rights.

During CEZAP's many years of work in providing legal advice and assistance to consumers, as well as during the duration of the two-year project "Improving capacities of CSOs and the system of consumer protection in Montenegro",⁹⁸ within which lawyers provided free legal aid to consumers, while the project applicants received specific consumer complaints via web and mobile application www.potrosaci.me⁹⁹, we have recorded numerous citizens' complaints about their consumer rights.

98 The project "Improving capacities of CSOs and the system of consumer protection in Montenegro - PROTECT.ME" is being implemented by CeMI in cooperation with the Centre for Consumer Protection in Montenegro (CEZAP), the Montenegrin LGBTQ Association (Queer Montenegro) and the Network for the Affirmation of the European Integration Process (MAEIP). This project is funded by the European Union through the Instrument for Pre-Accession Assistance.

99 Web and mobile application www.potrosaci.me, administered by CeMI, is the first mobile application of this kind in Montenegro that enables citizens to anonymously report the cases of violation of consumer rights, with the possibility of sending photos, audio recordings and similar evidence for possible violations of consumer rights. The main goal of collecting applications from citizens is to measure the level of respect for consumers' rights in Montenegro, determine which companies, owners and/or employees are least aware or tend to disregard consumer rights, but also to raise awareness of employers and citizens about the negative consequences such behavior. This application can allow managers and employers of individual companies to take appropriate measures based on the opinions and comments of citizens against workers who have violated the Law on Consumer Protection. The application was developed within the project "Improving capacities of CSOs and the system of consumer protection in Montenegro - PROTECT.ME".

Regarding the requirements and needs of citizens for free legal aid, on the basis of numerous complaints of citizens, we can state that the most common problems that arise in the Montenegrin consumer protection system when consumers wish to protect their consumer rights are as follows:

- Consumers have very low knowledge of their consumer rights;
- Consumers face difficulties in exercising their rights when it comes to public services such as electric power, water supply and telecommunication services;
- Consumers face a number of problems due to the inability to understand the contractual provisions, especially in the field of telecommunications, financial services, energy production;
- There are very frequent complaints to the amounts of water bills, consumed electricity or telecommunication services;
- Consumers also complained about the impossibility to exercise their rights due to conflicted provisions of the Constitution of Montenegro and the Law on Consumers on the one hand, and the Law on Energy Production and regulations related to it on the other hand, in the context of being cut off from the electricity network supply. This problem is particularly pronounced if the consumer continues to pay the contested debt;
- Consumers were often prevented from exercising their consumer rights in relation to electricity supply before the second instance body;
- Consumers can not exercise the right to choose the electricity supplier due to monopoly status that is currently in force;
- Consumers face problems with exercising their rights when purchasing technical goods; and the applications are usually related to poor quality of goods, non-compliance with deadlines for delivery or exceeding the deadline for repair;
- There is a very common case of non-existence or inadequate labelling of prices and additional costs or different prices on the shelves compared to those charged to consumers in cashier;
- Consumers in Montenegro are often faced with incomplete labelling of products, absence of instructions and warnings, inability to understanding the conformity of products and unclear guarantee conditions;
- Traders often misuse their legal obligations and avoid to fulfil them in the case of return, where the only proof of purchase of a fiscal receipt,

although Article 25 paragraph 2 of the Law on Consumer Protection states that the purchase of a product can be determined on the basis of the receipt of the purchased product, sale contract, guarantee or in another appropriate manner;

- Also, traders often abuse articles of the laws defining the deadline for the traders for non-conformity of goods, since this provision is unclear in the Law;
- In terms of safety and quality of food, consumer complaints are mostly related to: poor product quality, unhygienic conditions in stores, inadequate storage of products, expired used-by dates, etc;
- Consumers are daily faced with misleading advertising where products with untruthful claims are distributed to them through various media, although the Law explicitly prohibits the advertising of products aimed at deceiving consumers.
- Consumers also filed complaints on unfair commercial practices;
- Consumers are often exposed to aggressive sales methods;
- Financial services users often do not receive clear, accurate and understandable information before taking a credit or when undertaking any other monetary investment. Also, banks and microfinance institutions often intentionally fail to inform consumers at the advertising or pre-contract stage about the suitability of the credit product to the financial situation of the consumer.

The statistics of consumer complaints received by CEZAP over the past several years is presented below.

Complaints statistics for 2014

Consultations in person	Consultations by phone	Consultations by e-mail	Total
367	917	336	1620

Complaints statistics by areas for 2014

Category	Number of complaints
Electricity	216
Phone operators	228
Technical devices	175

Clothes and footwear	135
Furniture	89
Supermarkets	152
Financial services	346
Other	279

The total number of complaints related to public services in 2014 was 444, compared to all other categories, with a total of 1176 complaints?

Complaints statistics for 2015

Consultations in person	Consultations by phone	Consultations by e-mail	Total
323	1254	644	2221

Complaints statistics by areas for 2015

Category	Number of complaints
Electricity	197
Phone operators	173
Technical devices	138
Clothes and footwear	41
Furniture	75
Supermarkets	113
Financial services	1264
Water supply services	139
Other	81

The total number of complaints relating to public services in 2015 was 509, compared to all other categories, with a total of 1712 complaints.

Complaints statistics for 2016

Consultations in person	Consultations by phone	Consultations by e-mail	Total
430	1529	519	2478

Complaints statistics by areas for 2016

Category	Number of complaints
Electricity	314
Phone operators	380
Technical devices	302
Clothes and footwear	91
Furniture	69
Supermarkets	219
Financial services	767
Water supply services	222
Other	114

Comparing the number of complaints by categories, as it can be seen from the table, the number of complaints on public services (a total of 1562 complaints) is significantly higher compared to all other categories (916).

7. Conclusions and recommendations for improving the protection of consumers in Montenegro - how to reach the European level of consumer rights protection in Montenegro?

Although it can often be heard that consumer protection is one of the priority areas for achieving a better quality of life for all citizens in Montenegro, and that reforms in this field are being implemented in order to provide efficient consumer protection and functioning of the market economy, the consumer protection is not on a satisfactory level. The study gave an overview of the work of the competent institutions, taking into consideration the implementation of the law in practice and the reactions of the citizens themselves as consumers. Therefore, the conclusions and recommendations will be listed in this chapter in

the following sections: trade, consumer protection when in electronic shopping, services, with special emphasis on the energy sector, telecommunications and utilities, food safety, banking and financial services, the possibility of out-of-court settlement of consumer disputes, educating and informing consumers.

Trade

- If we consider consumer complaints, the level of consumer protection is not at a satisfactory level. Over the past few years, there has been an increased number of consumer complaints, not because consumers are more aware and more informed about their rights, but because the goods and services market is constantly expanding;
- Traders are predominantly focused on making profits, which is the reason for refusing consumers when they want to exercise their consumer rights;
- The lack of human capacities for market surveillance can also be noticed;
- Although the adoption of the Law on Consumer Protection, which came into force in July 2014 and is almost fully harmonized with EU directives, has created good prerequisites for the protection of consumer rights, its amendments turned out to be necessary. Namely, although this Law is quite harmonized with the EU directives, the procedure for amending the existing Law on Consumer Protection which is ongoing, has been pending for two years;
- Its key shortcomings is that it not specified anywhere that purchase rights can be exercised without a fiscal receipt, which leaves room for misuse and avoiding to perform legal obligations in the case of complaints by traders, whose only evidence of purchase is a fiscal receipt;
- Also, when it comes to the articles of the Law defining the deadline for the trader for the non-conformity of goods, it is not clearly formulated what type of used good is referred to; for example, used cars, technical and electronic devices, furniture, etc. can not have the same return period (one year) as, for example, clothing, footwear, etc.;

Hence, it is necessary to:

- ***Systematically and intensively work on increasing citizens' awareness of consumer rights, as well as increasing the awareness of the mechanisms that citizens can use in exercising their rights;***
- ***Strengthen the capacity of market surveillance institutions to influence***

traders who consciously disable the use of consumer rights;

- ***Adopt the Law on Amendments to the Law on Consumer Protection as soon as possible in order to be fully harmonized with the EU directives, and in order to eliminate its shortcomings and misuse in practice, especially when it comes to the right to return of goods (purchasing rights can also be achieved without a fiscal account), and deadlines for liability of traders for non-conformity of goods.***

Electronic commerce

- In order to raise consumer awareness, it is necessary to provide information to the business sector about new e-commerce obligations, and provide consumers with information on safe online shopping. This includes information on indicators to identify a trusted trader or fraud, safe payment methods, and security rules that must be respected.
- The necessary prerequisite for the development of e-commerce is to eliminate consumers' lack of confidence in this type of business, raise public awareness of its convenience and improve the quality of access, in order to achieve the highest level of consumer confidence and safety in the process of e-commerce on the one hand, and its development, on the other hand.

Thus, it is necessary to:

- Conduct activities aimed at consumer awareness raising regarding electronic commerce;
- Provide Montenegrin consumers with all information on safe online shopping;
- Eliminate consumer lack of confidence in online shopping;
- Strengthen the capacities of inspectors in the field of electronic commerce in order to effectively protect consumers.

Public services (energy production, telecommunications and postal services; utility services)

- Consumer rights in the field of public services in Montenegro are not sufficiently respected;
- Montenegrin consumers (end users) are not sufficiently informed about

- their rights in the field of energy production, telecommunications and postal services, as well as utility services;
- There is a great deal of distrust of Montenegrin citizens towards providers of these services, as well as lack of cooperation between providers of public services with consumer organizations, regulators;
 - In this area, there is an obvious inadequate application of the laws by public service providers, as well as the courts' inefficiency;
 - It can be noticed that the laws regulating the consumer protection and public services are applied differently, or not applied at all – in other words, they are in conflict. First of all, this refers to the relationship between sectoral laws in relation to the Law on Consumer Protection;
 - With regard to the procedure for cutting of electricity, the provisions of the Law on Energy Production are contrary to the Law on Consumer Protection, and both laws are in conflict with the Constitution which stipulates that citizens should not be denied the basic human rights, including the right to water and electricity;
 - The efficient staged approach has not been made available to Montenegrin consumers. Namely, public service providers, in particular EPCG, misuse their monopoly position, threatening to cut off consumers from the distribution network if they pay their bills within the timescales specified by the provider. At the same time, consumers complain about the amount of monthly bills, but there is no second instance authority to appeal to. This approach is in direct contradiction with the Constitution of Montenegro and Article 6 of the European Convention on Human Rights;
 - The measures implemented in Montenegro, when it comes to the sanctioning of irresponsible electricity consumers, are not in line with democratic standards and are detrimental to human dignity;
 - A large number of consumers in Montenegro do not have contracts for providing services with EPCG (the only provider of this type of service in Montenegro), which presents a breach of the Law on Consumer Protection;
 - In Montenegro, Electric Power Company often charges the consumer for unauthorized use of electricity, without the evidence that such offense was committed, which also violates the provisions of the Constitution of Montenegro and the European Convention;
 - Users of electronic communication network services are still not suf-

ficiently aware and educated about their rights, place and role in the market which prevents them from properly benefiting from the current market situation offered to them;

- Measures and actions undertaken by the Telecommunications Agency are insufficient if no significant actions are initiated regarding the legislation and regulations;
- Montenegrin consumers do not have the option to choose a utility service provider or to conclude a contract on their rights and obligations in this field;
- There is an obvious lack of a two-way communication between citizens and local administration; citizens are not familiar enough with their rights and obligations, they often lost their way in the maze of the municipal system of accountability in a wide range of services of general interest for citizens, provided by local self-government directly or through municipal public utility companies;
- When it comes to the work of the PUC, written contracts and adequate prior consumer information, bills and measurements, discrimination and the possibility of terminating the service contract are some of the most common challenges. Also, the formation of prices and/or tariffs for utility services is done in a closed circle, between local authorities and the PUC. Consumers are not informed in time, they are not allowed to participate in price formation procedures, nor are they aware of the real scope of their rights and obligations as consumers, i.e. users of municipal services;

Therefore, it is necessary to:

- ***undertake all possible activities aimed at raising the awareness of the citizens about the rights guaranteed to them;***
- ***ensure the application of legal regulations in the field of public services that regulate the consumer protection policy, since the main problem is non-compliance with the law by service providers;***
- ***strengthen the work of regulatory and alternative bodies for resolving consumer disputes;***
- ***put more efforts should into the application, monitoring, amendments of existing laws and bylaws, primarily in order to ensure the legislative framework for adequate protection;***
- ***harmonize internal regulations with the Law on Consumer Protection;***

- *use legal institutes that are available to the electricity supplier, based on which the consumer will be obliged to pay their bills without being deprived of elementary rights such as “cutting off from electricity supply network”. By regularly collecting debts, the supplier can be protected from irresponsible consumers without violating human rights and democratic procedures;*
- *provide social protection of vulnerable electricity customers;*
- *the regulatory authorities must carry out continuous monitoring of all elements affecting safety (reliability), quality of delivery and electricity price;*
- *harmonize the system of functioning of the competent bodies in order to ensure higher level of consumer protection by judicial and out-of-court activities;*
- *provide complete information on the prices and tariffs of electronic communications services and changes in the offers and prices of the services provided by electronic communications operators and prevent operators from introducing services for which the legal requirements are not fulfilled in terms of informing the users about the content of the service, the price and changing conditions of service provision;*
- *enable the choice to Montenegrin consumers or find another adequate solution based on which there will not be only one-sided acts of the PUC’s regarding the provision of utility services on the one hand, and consumer obligations on the other hand;*
- *harmonize the work of the PUC with the conditions imposed by the legislation on consumer protection.*

Food safety

- Montenegrin consumers are not sufficiently informed about the safety and quality of food. Also, they are not satisfied with the level of safety and quality of food in our country and do not have enough confidence in the competent state institutions regarding the provision of information on the situation in this area;
- Food safety is an essential, health issue for all countries. The extent of the sensitivity of this chapter in consumer protection is demonstrated by not so rare cases of withdrawal of whole batches of dangerous products (children’s toys, baby cots...) from the market in the recent years;

- When it comes to food safety and quality, consumer complaints are mostly related to: poor quality of products, lack of hygiene standards in stores, inadequate storage of products (e.g. certain types of dairy products are not stored at prescribed temperatures), expired use-by dates and similar. Food safety is an essential health issue in all countries. Illnesses transmitted by food can not only significantly affect human health and well-being, but can also have economic consequences on individuals, families, communities, businesses and countries.

Thus, it is necessary to:

- ***Further increase consumer awareness in Montenegro in the area of food safety and quality;***
- ***Strengthen the capacity of inspections in charge of food safety control, and thus enhance supervision over the enforcement of laws in this field;***
- ***Work more intensively on the education of inspectors in the area of food safety and other laws in the field of agriculture in order to effectively monitor the application of laws in this field.***

Education and awareness of consumers

- The Montenegrin market is characterized by inactive and unprotected consumers. Most often citizens show the so-called passive resistance, not reacting when their rights are violated. The most common problems that arise in this area are: **low level of awareness of citizens on consumer protection issues, inability to understand contractual provisions, especially in the field of telecommunications, financial services, energy production, lack of or inadequate labelling of prices and additional costs, incomplete product labelling, lack of instructions and warnings, lack of understanding of product conformity provisions and vague terms of warranty, unfair commercial practices and misleading advertising, aggressive sales methods, etc.**
- Citizens' knowledge about consumer rights **is far from satisfactory**. Also, the awareness of citizens differs greatly, depending on the region of Montenegro. Thus, we can say that citizens from the central and southern parts of Montenegro are more familiar with their consumer rights, while the northern part is lagging behind to a large extent. The fact that the majority of citizens in the northern region do not even know the meaning of the consumer rights shows how huge this gap is.

Thus, it is necessary to:

- ***Carry out a continuous and intensive education of Montenegrin consumers, which should be part of the education system. In this way, the curricula of educational institutions need to be harmonized with the needs of higher education of citizens on their consumer rights;***
- ***organize various thematic meetings, educational shows, internet campaigns, info days and similar activities as soon as possible, in order to inform consumers about the importance of consumer protection;***
- ***Apart from educating consumers about their rights, educate and inform traders about their obligations, in order to raise the general level of knowledge about consumer protection in Montenegro, with a special emphasis on the northern region.***
- ***Strengthen the role of the media, which still do not recognize consumer protection as an area of great social significance.***
- ***Improve the institutional framework for consumer education in order to define more precisely the obligations regarding the education and informing consumers, and that the institutions have clearly defined competencies and responsibilities in this area;***
- ***Strengthen the role of local authorities in informing citizens, and establish more consumer advice and protection offices at the local level;***
- ***Strengthen the non-governmental sector in this area, and clearly define the criteria and principles of donating projects in the field of consumer protection.***

Banking and financial services

- Consumer protection policy in the field of financial and banking services must constantly be improved in order to enable consumers to achieve basic rights related to information, protection of economic interests and effective resolution of consumer disputes;
- In individual areas, which include financial services, Montenegro has achieved a different degree of harmonization with the European legislation and its application. Montenegro still does not have a full quality institutional and regulatory framework and satisfactory level of awareness;

- Montenegro still does not have financially literate consumers, able to make economically justified decisions;

Strengthening the capacity of the inspection for supervision in the field of consumer credits

Therefore:

- ***Financial services users must have clear, accurate and understandable information before taking a credit or when undertaking any other monetary investment. Accordingly, it is necessary to enhance level of awareness of consumers, users of financial and banking services, especially when it comes to guarantees for credit repayment;***
- ***It is necessary to influence banks and microfinance institutions with the aim of increasing the level of consumer awareness, and in order for consumers to obtain standardized information at the stage of advertising, necessary for assessing whether the credit product is adjusted to the financial condition of the consumer;***
- ***The competent institutions must adopt the Strategy for Consumer Financial Literacy, and further strengthen mechanisms for consumer rights protection along with financial education that enables consumers to make long-term financial plans and decisions.***

Out-of-court settlement of consumer disputes

- The out-of-court settlement of consumer disputes between consumers and traders has been available to Montenegrin citizens in law provisions for almost nine years, through the Arbitration Committee which operates in the Chamber of Economy. However, the Committee has not been working since May 2016, but even when it functioned, there was an obvious low citizens' interest in resolving disputes through the Arbitration Committee. For example, the available data show that there were only 15 requests addressed to the Committee in 2015;
- The key reason for the lack of citizens' interest in resolving disputes through the Arbitration Committee is the insufficient awareness of the citizens themselves of the protection of their consumer rights, as well as their lack of knowledge about the availability of this mechanism;
- The key reasons for the termination of the work of the Arbitration Committee are that its decisions are not binding; that the positive outcome of the dispute requires the approval of both parties; and that

the remuneration payment for the work of the members of the Council handling the cases, is not ensured.

Therefore, it is necessary to:

- ***urgently amend the Law on Consumer Protection in order to contribute to the functioning and efficiency of the Arbitration Committee;***
- ***improve the work of the Committee regarding out-of-court settlement of consumer disputes on a daily basis, and pay great attention to the training of the Council's members, and promotion of the importance of the Committee's work among consumers and traders;***
- ***pay great attention to informing and educating citizens about the possibilities offered by out-of-court settlement of consumer disputes and the work of the Arbitration Committee;***
- ***request the Montenegrin media companies to undertake activities in the field of informing the public about consumer rights in general, as well as about the possibilities of out-of-court settlement of disputes.***

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About the project – Improving capacities of CSOs and the system of consumer protection in Montenegro

Centre for Monitoring and Research (CEMI), in cooperation with partners: the Centre for Consumer Protection in Montenegro (CEZAP), the Montenegrin LGBTQ Association (Queer Montenegro) and the Network for the Affirmation of European Integration Process (MAEIP), in the period from December 18th, 2015 until December 18th, 2017, implemented a project entitled “Improving capacity of civil society organizations (CSOs) and the system of consumer protection in Montenegro PROTECT.ME”. The project is funded by the European Union through the Instrument for Pre-Accession Assistance (IPA).

The goal of the project is to build the capacities of CSOs in policy development and provision of services in the field of consumer rights. Also, the project contributed to the very process of European integration through the empowerment of the civil sector actively participating in social development by creating policies in the process of project implementation. Through the activities of the project, support was provided for the protection of consumer rights, consumer awareness and business sector members increased in terms of their rights and obligations, but also increased the participation of state and local government structures and citizens themselves in creating an appropriate consumer protection system.

During the two years of the project, numerous activities were realized and achieved enviable results, including trainings for strengthening the capacities of smaller NGOs, establishing the first network for consumer protection in Montenegro, providing free legal aid to consumers, developing the first web and mobile application for reporting violations of consumer rights www.potrosaci.me, organizing an intensive media campaign to raise citizens' awareness of their consumer rights. Within the project, an analysis of case-law in EU Member States and international courts in the field of consumer rights was published, and the procedure of mini grants was conducted. In the competition, three best projects were financed: the project “Youth on the Consumer Protection System”, implemented by the NGO Naša budućnost, the project “ The Right to Know” implemented by NGO CulturOm, and the project Documentary-educational film “Homo Consumens” submitted by NGO CEZAM.

All the partners in the project worked together with other civil society organizations and institutions in order to increase citizens' awareness of their consumer

rights and opportunities for cooperation with the Network that provided them with free legal assistance by licensed lawyers. The mobile application www.potrosaci.me will also help citizens in the future to be proactive and motivate them to report possible violations of their rights.

