Despite a high level of harmonization with EU law, the Consumer Protection Law (2016) in reality led to a deterioration of the level of consumer protection in Serbia. This study analyzes problems embedded in the institutional mechanisms that brought to this worsening, proposes policy options that need to be deliberated upon during future reforms, and provides a spectrum of recommendations as solutions to current problems.
Despite a high level of harmonization with EU law, Consumer Protection Law (2010) in reality led to a deterioration of the level of consumer protection in Serbia. This Study analyzes problems embedded in the institutional mechanisms that brought to this worsening, proposes policy options that need to be deliberated upon during future reforms, and provides a spectrum of recommendations as solutions to current problems.

Study of Consumer Policy in Serbia: Towards a European Level of Consumer Protection in Serbia

January 2013
This Study was developed with the financial support of the European Fund for the Balkans, as part of the "Think and Link" Regional Policy Program.

The views expressed in this Study do not necessarily represent the official opinions of the European Fund for the Balkans.
# Table of Contents

**CONTENT** .......................................................................................................................... 3  
**ABBREVIATIONS** .................................................................................................................. 6  
**POLICY BRIEF** ...................................................................................................................... 7  
**I. INTRODUCTION TO THE CONSUMER POLICY STUDY** .................................................. 12  
**II. CONSUMER PROTECTION IN THE EU** ......................................................................... 16  
**II.1 THE CREATION OF CONSUMER PROTECTION LAW** ................................................. 17  
**II.2 EU CONSUMER LAW IN BETWEEN THE PROCESSES OF NEGATIVE AND POSITIVE HARMONISATION** ........................................................................ 18  
**II.3 THE TWOFOLD GOAL OF THE EUROPEAN CONSUMER LAW** ............................... 19  
**II.4 TURN TOWARDS MAXIMUM HARMONIZATION REQUIREMENTS** ......................... 20  
**II.5 SOURCES OF EU CONSUMER PROTECTION LAW** .................................................. 21  
  Directive on contracts negotiated away from business premises ........................................... 21  
  Directive on unfair contract terms ......................................................................................... 22  
  Directive on distance contracts ........................................................................................... 23  
  Directive on consumer sales ............................................................................................... 23  
  Directive on unfair business-to-consumer commercial practices in the internal market .......... 24  
  Directive on consumer credit ............................................................................................. 27  
**II.6 INSTITUTIONAL MODELS OF CONSUMER PROTECTION IN THE EU MEMBER STATES** .......................................................................................................................... 29  
  Civil law approach ............................................................................................................. 30  
  Administrative approach - a body subordinated to the Ministry ........................................ 30  
  Administrative approach - joint competition and consumer protection bodies .................. 31  
  Administrative approach - Scandinavian model (Consumer Ombudsman) ....................... 32  
**III. LEGAL AND INSTITUTIONAL FRAMEWORK OF CONSUMER PROTECTION IN SERBIA** .............................................................................................................................. 34  
**III.1 LEGAL FRAMEWORK** .................................................................................................. 35  
  The Constitution of the Republic of Serbia ......................................................................... 35  
  Stabilization and Association Agreement .......................................................................... 35  
  Consumer Protection Law .................................................................................................. 35  
**III.2 CONSUMER PROTECTION SYSTEM - BETWEEN THE LAW AND REALITY** .......... 45  
  Consumer Protection Strategy ........................................................................................... 46  
  National Consumer Protection Council ............................................................................. 46  
  Ministry in Charge ............................................................................................................. 47  
  Inspection Oversight ......................................................................................................... 48  
  Other Relevant Bodies ....................................................................................................... 49  
  Court Protection ............................................................................................................... 50  
  Alternative Dispute Resolution ......................................................................................... 50  
  Consumer Protection Organizations and Associations ........................................................ 51
## Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>BEUC</td>
<td>European Consumer Organization</td>
</tr>
<tr>
<td>CPC</td>
<td>Commission for the Protection of Competition</td>
</tr>
<tr>
<td>CPL</td>
<td>Consumer Protection</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>GIZ</td>
<td>German Agency for International Cooperation (Deutsche Gesellschaft für Internationale Zusammenarbeit)</td>
</tr>
<tr>
<td>IPA</td>
<td>Instrument for Pre-Accession Assistance</td>
</tr>
<tr>
<td>OECD</td>
<td>Organization for Economic Co-operation and Development</td>
</tr>
<tr>
<td>ORL</td>
<td>Obligatory Relations Law</td>
</tr>
<tr>
<td>SIGMA</td>
<td>Support for Improvement in Governance and Management</td>
</tr>
<tr>
<td>SSA</td>
<td>Stabilization and Association Agreement</td>
</tr>
<tr>
<td>ZAP</td>
<td>Strengthening Consumer Protection in Serbia Project</td>
</tr>
</tbody>
</table>
Policy Brief

Consumer Policy in Serbia and European integration

Reaching European standards of consumer protection is an important obligation for Serbia in its process of European integration. This obligation falls under Article 78 of the Stabilization and Association Agreement, which obliges Serbia not only to harmonize its legislation with the consumer *acquis communautaire*, but to also implement an active consumer protection policy in order to reach a level of consumer protection equivalent to the one in the EU.

In Serbia, Consumer Protection Law (CPL) came into force from the January 1st 2011, which for the first time introduced the provisions of a dozen European directives in the Serbian legal system, thus ensuring an almost full harmonization with EU law. Despite the fact that European law in this area is continuously developing, leading to further work on the harmonization, the level of legal harmonization is neither the chief, nor a great problem for effective consumer protection in Serbia.

The principal problem of consumer protection in Serbia today lies in the inadequacy of implementation mechanisms foreseen by the Law to the level of development of the Serbian institutions. Instead of relying on the traditionally more developed institutions such as the Market Inspection, the CPL brings to the forefront the courts, alternative mechanisms of dispute resolution and consumer organizations, which in actuality brought to a deterioration of the consumer protection level in Serbia.

Consumer Protection in the EU

Consumer law in the European Union has not developed solely with the goal of attaining a high general level of consumer protection, but also out of the need to harmonize the disparate national levels of protection – a barrier to the freedom of movement of goods and services. Although, it was based on the principle of minimum harmonization for a long period of time, eventually what prevailed was the principle of maximum harmonization which imposes to the Member States not only a minimum but also the maximum level of protection allowed.

The most important sources of EU consumer law are directives, which indirectly or directly regulate consumers’ rights. Although the directives regulate the legal obligations of Member States in great detail, in terms of the implementation of these legal acts, they are left with great latitude in the choice of the mechanism, which suits their specific national circumstances the most.

Consequently, EU countries have diverse institutional models of consumer protection, from those primarily private law models such as Germany and Austria, which rely predominantly on the jurisdiction of general courts, to administrative models with robust authorities (Commissions, Agencies) for implementation – often merged with the bodies in charge of competition enforcement, – and to the Scandinavian model which relies on the role of
Consumer Ombudsmen assisted by executive agencies (in some cases also merged with the competition protection authorities).

**Legal and Institutional Framework**

The basis of the legal framework of consumer protection in Serbia is the Consumer Protection Law, adopted in 2010. This Law regulates in detail consumer rights in a manner very similar to the one in the EU. Additionally, the Law also prescribes a consumer protection system in Serbia, which relies on the role of the responsible Ministry, the Market and other inspections, consumer organizations, courts and alternative dispute resolution mechanisms. The National Council for Consumer Protection, formed as late as October 2012, should play an important role in policy coordination.

Notwithstanding that the mechanisms, which the legislator envisioned for the implementation of legal provisions are to a great extent similar to those in the EU member states, they do not take into account the current institutional reality in Serbia. Judicial protection remains inefficient for such disputes, alternative dispute resolution mechanisms are still in their inception and are not widely used, while the consumer organizations are insufficiently developed and do not possess the necessary capacities.

The Law envisions a Consumer Protection Strategy, which has neither been adopted to this date, nor made available to the public in draft form. The National Program for the Protection of Vulnerable Consumers, also envisaged by the Law, has suffered the same fate.

**Policy-Making in Serbia and CPL**

In the Western Balkan countries, including Serbia, the stage of policy elaboration is usually not separated from the stage of legal drafting, which is the consequence of a lack of understanding, knowledge and capacity in the Ministries for preparing policy drafts. As laws are not a product of discussion, comparison and policy options analysis, they oftentimes do not reflect actual problems, and especially do not reflect the best (most efficient and most economical) approach to problem resolution. The political leadership within the ministries (above all the Ministers) often creates policies intuitively, where the legal drafting process is immediately initiated, and the intuitive solution is elaborated in an ad hoc way.

CPL was drafted and enacted through an unsystematic process and in that sense, it can be deemed a good example of problems surrounding policy making and the legislative process in Serbia. Assessment of the process is particularly negative when it comes to the drafting of the section of the law related to implementation and establishing of new bodies and reforming existing ones, as the feasibility of enforcement of legal provisions within the prescribed institutional framework was not even a matter for discussion.

Following two years of systematic work on the substantive provisions of the CPL, what ensued was a hasty finalization of the part of the law concerning implementation in order to have the Draft Law adopted in the Parliament prior to the publication of the European Commission's Annual Report on Serbia's progress in the EU integration process. In this case, the EU integration process effectively worked against fulfillment of an obligation under the SAA.
Options for Consumer Policy in Serbia

Bearing in mind the experiences of EU countries in the implementation of consumer policy, as well as the specificities of the Serbian legal and institutional framework, four basic options for the future development of consumer policy in Serbia have been defined from the implementation perspective. The options considered are:

1. **Zero option - status quo**
   No changes of the implementation mechanisms foreseen, but requires long-term efforts to develop and improve those already prescribed by the CPL. This option would produce visible results only in the long run.

2. **Consumer Protection Law (2010), version 2.0**
   Indicates amendments to the existing CPL, which ensure the strengthening of the Market Inspection’s and misdemeanor courts’ role in implementation, through the introduction of a certain number of new misdemeanor offenses. In addition, it encompasses a hierarchical strengthening of the unit in charge of consumer protection within the responsible Ministry. This option includes also further work on the strengthening of the already envisioned mechanisms, but in the meantime ensures more effective protection for the consumers.

3. **New Concept 1 - Commission for the Protection of Competition**
   Indicates transfer of certain consumer policy enforcement responsibilities to the Commission for the Protection of Competition, along with the expansion of its authority to pronounce pecuniary and other measures which are at its disposal in the area of competition to the consumer protection area.

4. **New Concept 2 - A Separate Body for Consumer Protection**
   Implies the establishment of a completely novel independent body dedicated solely to consumer protection, e.g. Consumer Ombudsman or a special agency.

The analysis of advantages and disadvantages of all the options revealed that arguments prevail in favor of Option 2. The main advantage of this option lies in its effectiveness: the level of consumer protection in Serbia would be essentially elevated in a relatively short period of time, through immediate improvement by re-introducing inspection and misdemeanor courts, as already functioning mechanisms, to the core of the protection system. At the same time, this policy option would not exclude additional affirmation of the mechanisms upon which the current system rests, but would instead allow for a long-term expansion of the range of options for consumer protection and an additional improvement of the overall level of protection through their gradual strengthening (which requires a longer period of time).
Recommendations

On the basis of research and analysis, and taking into account the discussion during the Conference held on 16 November 2012 that brought together all key stakeholders, the following recommendations have been formulated:

1. Further changes to Consumer Protection Law are necessary, as well as to other legislation relating to consumer policy, with the support of international experts, in order to fully meet the obligations under the Stabilization and Association Agreement.

2. The introduction of a number of misdemeanor offenses for breaches of the Consumer Protection Law is proposed, as well as strengthening the inspection oversight in this area.

3. Specialization for judges of misdemeanor courts in several widely defined subject areas is proposed.

4. The current institutional model should be modified "in two steps" in order to maximize results as soon as possible. The first step would be based on the “2.0” option, whereby it should comply with all the steps and conditions described in the Study. In the medium term (2-3 years) the existing unit within the Ministry in charge could be hierarchically elevated or the third option could be applied the relocation of the central point of consumer protection to the Commission for the Protection of Competition, whereas the preparations for the implementation of this option should begin even earlier.

5. It is proposed that the Consumer Protection Strategy for 2014-2020 incorporates, inter alia, the following priorities:
   - Increasing consumer confidence in the state, including the development of a comparable level of consumer protection throughout Serbia
   - Strengthening the position of the consumer on the market through consumer education, active support to consumer organizations and their active involvement in the policy making process
   - Ensuring that consumer issues are taken into account in all other relevant policies
   - Providing a comprehensive understanding of the issues of vulnerable consumers as a basis for the National Program for the Protection of Vulnerable Consumers
   - Improving the collection and processing of data related to consumer policy so as to ensure a better basis for the development of future legal acts and other initiatives

6. Additional efforts are needed for the affirmation of the National Council for Consumer Protection in order to ensure the regularity of its sessions and respect for its decisions/recommendations in the future consumer policy making and implementation. The Council may be the adequate place for the discussion of proposals for policy options, identified through a wide ranging public debate between the public and civil sector.

7. It is essential to immediately commence with the preparations and development of the draft National Program for the Protection of Vulnerable Consumers.

8. Of crucial importance is to initiate further discussion and deliberate on the category of vulnerable consumer in a manner that would more firmly incorporate the principles of anti-discrimination and equal opportunity (equal access) into the consumer policy of Serbia, as a country aspiring to join the EU single market.
9. The abolishment of the legal provision on the necessary minimal number of members for registering consumers’ organizations with the Ministry as well as deliberation upon other methods for determining their capacity and credibility are proposed.

10. It is necessary to open a wide-ranging public debate in the National Council on the ways of strengthening the consumer organizations, as key players in the consumer protection system, as their capacities are poorly developed.

11. In the process of drafting a new law or amending the current one, it is important that stakeholders are involved in the process from the initial stages, that continuous inter-ministerial consultations are held. Also, advantages and disadvantages of the offered/possible policy options (especially in relation to the implementation of consumer policy) should be assessed and a sufficiently wide and longstanding public debate on the established draft should be carried out.
I. Introduction to the Consumer Policy Study: The Why and the How?
Consumer protection policy represents a significant element of a market economy. The need to protect the interests of consumers becomes ever more important with the opening of the market, inflow of an immeasurable number of products, creation of multiple providers of different services, etc. Hence, the state which is committed to the welfare of its citizens needs to ensure an effective consumer protection policy. In the EU context, the scope of consumer policy is defined through the protection of health, safety and economic interests of consumers as well as the promotion of their right to information, education and the right of consumers to organize themselves in order to safeguard their interests.\(^1\) It also aims at boosting free movements of goods and services across the Union. Consumer policy is also an important instrument in ensuring equal opportunities for all citizens and needs to be strongly focused upon these issues.

Although consumer protection was not a completely unfamiliar concept in Serbia before the start of the transition process in 2000s, the most important source of (private) consumer law was the (general) Law on Obligations of 1978. However, this Law does not ensure a policy of consumer protection as such, but only regulates the general rules of private law, which could be used in consumer relations as well. Nevertheless, it cannot be said that prior to the introduction of consumer policy with the transition and EU integration process consumers’ rights were protected by the Yugoslav state. That is why the first Consumer Protection Law (CPL) was passed only in 2002, when the spur of EU integration and overall transition into market economy was already present.\(^2\) This first CPL provided a very basic and fragmented protection for consumers and was not harmonized with the EU law. In practice, it produced hardly any results. There is no case law of the courts on the basis of this law. The inspectorates of the responsible ministries, as administrative authorities in charge of enforcement, based their actions almost exclusively on the general laws regulating trade rather than the Law on Consumer Protection of 2002. In 2005 this Law was repealed by the second Serbian Law of Consumer Protection, which represented a tangible step forward for consumers in Serbia.\(^3\) Finally, in 2010 the current CPL was enacted and its application started on 1 January 2011. This Law was to create a great step ahead in the fulfillment of consumer protection related obligations that Serbia assumed as part of its EU integration process.

The obligation to align the standards of consumer protection with those existing in the EU is set out in Article 78 of the Stabilization and Association Agreement, which Serbia signed on 29 April 2008. In addition to harmonizing its legislation with the entirety of the EU consumer acquis, this obligation means that Serbia needs to pursue an active policy of consumer protection, where implementation is equally important as having a well harmonized general consumer protection legislation. In the words of Karanikic-Miric:


clear distinction should be made between the notions of “harmonized consumer legislation” and “harmonized standards of consumer protection”. Considered alone, a national legislation that is harmonized with the protection in force in the EU does not assure existence of the national standards of consumer protection corresponding to the EU standards. The latter depends on a number of additional factors, and may be diminished due to: (1) Weak institutional capacity and the lack of competent and experienced officials, especially the ones in charge of application and enforcement of the consumer legislation; (2) Qualities of the legal culture at issue, and the fact that consumers may be ill-informed and unaware of the rights guaranteed to them under the law – which is not rare in the countries in transition; (3) The propensity to use other mechanisms of legal protection then those offered by the laws of the EU.4

This policy study is conducted on the hypothesis that the enactment of a new Consumer Protection Law in 2010, although it incorporated a major part of the EU consumer acquis, in fact led to the decrease in the level of consumer protection. As argued by Lazarevic and Djurovic, “due to serious problems in the sphere of implementation and enforcement, [the consumers’] level of protection is nowadays even lower than it used to be under the previous CPL, which was not harmonized with the EU acquis.”5 Lazarevic and Djurovic conclude that certain provisions of the CPL (2010), “such as those dealing with guarantees, […] are to be enforced through a rather modern and innovative enforcement mechanism, albeit one for which Serbia seems to be unprepared. The new mechanisms of out-of-court dispute settlement through mediation and arbitration are not yet functional and the role of the consumer organizations in this enforcement mechanism has not been supported by the State.”6 Moreover, this study aims to analyze the sources and elements of the aforementioned problem and identify the best possible solutions for addressing it. In order to achieve this end, a qualitative methodology has been applied in the research, given its suitability for “[engaging] in research that probes for deeper understanding rather than examining surface features” serves this goal.7 Data collection proceeded through a combination of field research and archive based research, with use of both primary and secondary sources. Field research was conducted through two main tools. Firstly, semi-structured interviews were conducted with a number of actors in consumer policy in Serbia, ranging from the policy making and advisory, to the implementation and civil society side. Secondly, an electronic questionnaire was prepared specially for the consumer organizations in Serbia, as the new key actors in the implementation of the new consumer policy. For the semi-structured interviews, the snowballing technique, in combination with the intentional one, was applied in identifying interviewees. Despite the negative implications these techniques can have for the representativeness of the sample, they were the most appropriate ones in the circumstances

6 Nebojsa Lazarevic and Mateja Djurovic.
in which this research has been conducted. Both the interviews and the questionnaire were used in order to ensure that first-hand information on the subject, as perceived by the actors involved in the creation and implementation of the policy, is collected and processed.

Having in mind that the legislative framework concerning consumer protection in Serbia is constituted of a large number of laws and regulations, be it of a general, horizontal or sectorial character, it should be emphasized that this study was limited to the general law which regulates consumer protection, and which regulates the consumer protection system in Serbia. The main reason for this limitation of the field of research is due to the fact that the focus of this study were institutional solutions and implementation mechanisms in the field of consumer protection, in accordance with the aforementioned research goal. The provisions of other regulations relevant for the institutional organization of this field (e.g. Law on trade, which regulates the work of the Market Inspection, Law on misdemeanors etc.) were taken into account to the extent of which it was necessary for a comprehensive analysis of the consumer protection system in Serbia. The research was conducted from May until December 2012, and was based on the system, which was in place in December 2012.

The first findings and recommendations of the Study were presented, discussed and, thus, tested in the round table discussion “Towards a European Level of Consumer Protection in Serbia” organized on 16 November 2012 in Belgrade. The participation of a wide circle of stakeholders in consumer policy, from the Minister in charge of consumer policy, to the representatives of various competent and interested state institutions (Market Inspection, misdemeanor courts, Competition Protection Commission, etc.) in the round table ensured additional verification of the findings and suitability of the recommendations. Furthermore, a number of new ideas and conclusions were added to the findings of the Study based on the interventions of a number of round table participants.

The study is presented in six chapters. Following the introduction, the second chapter sets the framework for developing the consumer policy in Serbia, as the EU candidate country – the EU consumer acquis. Chapter 3 presents and analyses the legal and institutional framework of consumer policy in Serbia, thus focusing on the main problem areas, especially with regards to the implementation mechanisms. The findings of the research conducted through interviews and questionnaires are mainly introduced in this chapter as well, to support the arguments regarding the specific problem areas of the CPL (2010). The fourth chapter focuses on the “root” cause of problems in many policy areas in Serbia, where consumer policy represents an excellent example of the consequences of this root problem – the problematic and quasi-existent policy making system in Serbia. This chapter no only introduces the main elements of successful policy making systems with the argumentation of key problems observed in this area in Serbia, but it also provides an analysis of the process of drafting of the CPL (2010) as a key cause to the inadequate and unsystematic solutions for implementation of consumer policy which found their way into the Law. The fifth chapter analyses four possible policy options in further pursuit of consumer protection in Serbia. The policy options presented in this chapter are based on the most widely used implementation systems for consumer protection in European countries. In the presentation of each policy option, both its positive and negative aspects are examined, in order to arrive at the most effective and efficient proposal for further reforms in consumer policy. These conclusions and the related recommendations are presented in Chapter 6, which also offers a number of more far reaching recommendations aimed at the improvement of the institutional setting needed for the successful consumer protection policy in Serbia.
II. Consumer Protection in the EU: 

*Framework Setting*
II.1 The Creation of Consumer Protection Law

Consumer protection law (consumer law) represents one of the more novel areas of law whose formation is associated primarily with the second half of the twentieth century.\(^8\) Namely, this period was marked by a general economic and industrial development, unprecedented in human history, when consumers began to play a very significant economic role as key players on the market, as the ones who need to consume the manufactured goods, or to take advantage of the provided services. Up to that point, the legal regime of protection was above all founded on the general rules of contractual law, and did not allow for an adequate level of protection. Therefore, it was necessary to create a new, separate legal regime that is specifically designed to provide adequate legal consumer protection.

The foundation of the emergent consumer law was laid down in John Kennedy's address to the US Congress, "Special Message to the Congress on Protecting the Consumer Interest, in March 1962".\(^9\) In this speech, Kennedy emphasized four basic consumer rights (the right to safety, the right to be informed, the right to choose, the right to be heard) and stressed the need to establish a special legal regime for consumers, as they are a particularly important economic group, which was not adequately legally protected through the generally applicable legal regime. Consequently, what followed in the US during the 60s and 70s of the twentieth century was the adoption of numerous legal acts, which provide the consumers with additional legal protection in various manners.

European consumer protection law began its development somewhat later than the American. The European Commission adopted the Preliminary program of the European Economic Community for a Consumer Protection and Information Policy in 1975.\(^10\) Modeled on Kennedy's address to the Congress, this document as well spells out basic consumer rights: the right to protection of health and safety, the right to protection of economic interests, the right of redress, the right to information and education, the right of representation (the right to be heard).\(^11\) This program set the foundation for the development of European Union consumer protection law, which today, thirty-seven years later, represents a distinct and highly developed area of EU law.

Consumer law even entered the highest European act on human rights, the Charter of Fundamental Rights of the EU, which emphasizes the fact that the policy of the Union ensures a high level of consumer protection. In the last program regarding further development of consumer protection for the period 2014 - 2020, the European Union

\(^8\) The onset of the development of consumer protection can be found even earlier, at the very beginning of the XXth century, more specifically in 1906 when the American publicist and writer Upton Sinclaire published The Jungle, a book in which he describes the way of packing meat in a factory in Chicago, or in other words what do the consumers get as a final product.


underscored the need to continue consumer progress with the goal of creating an empowered and capable consumer as a key actor on the Single Market.  

II.2 EU Consumer Law in Between the Processes of Negative and Positive Harmonisation

Both processes, negative and positive harmonization, mark the development of EU consumer protection law. In the beginning negative harmonization was more prevalent. At the time, the decisions of the European Court of Justice examined the rationale behind certain national provisions in the area of consumer protection law from the perspective of the free movement of goods and services. In these cases the Court examined the necessity of certain national provisions, which set restrictions on the free movement of goods and services between Member States within the Union. In its rulings, the Court also elaborated on the ways in which consumers are to be protected.

Precisely from this case law extended the trader's obligation to inform the consumer, which became the main instrument of consumer protection envisioned by EU consumer protection law. A consistent opinion of the Court is that only a well-informed consumer is capable of taking the right economic decision while acting on the Market. Thus, the obligation to provide accurate information is envisaged today through all the directives in the area of consumer protection law.

Parallel with the process of negative harmonization, the European Commission was also proposing a unique European legal act in certain areas of consumer protection law, mostly through directives. This process of positive harmonization, at the onset developed rather slowly and referred mainly to the protection of consumers' health and safety, only to significantly accelerate in the beginning of the 90s. As a result, tens of directives in the area of consumer protection law were adopted, which means that nowadays only a minor fragment of consumer law is not covered by any of the EU directives or regulations.

Slightly more latitude was left to the Member States of the European Union only in the matter of regulating the implementation of the transposed provisions of the directives. However, due to clearly defined guidelines, the countries are obliged to respect the criteria of efficiency, proportionality and to discourage traders from breaching those provisions.

---


Member States opted for different systems (mechanisms) of implementation and ensuring consumer law in practice. To begin with, two basic approaches can be distinguished: administrative, through certain administrative bodies with public law powers (e.g. Commission for the Protection of Competition) and civilistic approach, where application of general civil law sanctions (based on the decisions of general competence courts).

These unique European legal provisions have been and have remained a subject open to the interpretation of the European Court of Justice through a very rich and fruitful case law, which allows for a deeper understanding of the existing European consumer law and contributes to its further development.\textsuperscript{16} Namely, the Court emphasized through its case law that the terms of the EU law have an autonomous, European meaning, which cannot be equated with the terms in the national legal systems of the Member States.\textsuperscript{17} Thus, the Court represents the main authorized entity responsible for this kind of interpretation. From this role of the Court, stems its great significance in the development of consumer law in the EU.

II.3 The Twofold Goal of the European Consumer Law

From the very beginning, European consumer protection law has been developing with a twofold goal: firstly, the goal of attaining a high level of consumer protection, and secondly, the goal of securing unhindered movement of goods and services in between Member States through the establishment of increasingly more harmonized legal provisions. Therefore, the development of European consumer protection law was not driven only by its aim to provide consumers with a high level of protection. Moreover, the second engine represents the core of the construction and existence of the EU: the creation and realization of the common market.

The fact that these two goals are at times conflicting and mutually limiting raises a significant problem. Namely, the establishment of strict provisions, which would provide a high degree of protection to the consumers, represents a burden imposed on the traders who have to conform their commercial practices to the legal provisions, which in turn finally results in a slowdown of inter Member States trade. The European Commission often brings forth this argument when reproached on the inadequacy of the legal regime of consumer protection as in the occasion of the adoption of directives on unfair commercial practices and the new Directive on Consumer Rights.

Lately, one notices the tendency for the goal of establishing unrestricted movement of goods and services to take primacy in the creation of the EU consumer protection politics. Due to such a stand, this policy of the European Commission is open to fervent criticism on the part of European consumer protection organizations.

As a case in point of this approach, the European Commission in most cases adopts directives in the area of consumer rights on the basis of Article 114 of the Lisbon Treaty,

\begin{itemize}
\end{itemize}
which prioritizes the interest of creating and strengthening the common market rather than consumer protection. Conversely, Article 169 of the Lisbon Treaty represents the 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 provisions in the area of consumer rights. Such is the case for example with the Directive on price indication, which is adopted on the foundation of this legal basis. Still, in most cases, for the remaining directives, Article 114 is the basis for their adoption.

**II.4 Turn towards Maximum Harmonization Requirements**

The policy of European consumer protection law was characterized during a longer period of time by minimum harmonization requirements. With the exception of the Directive on the liability for defective products (Product Liability Directive), all other directives in the area of consumer protection law (e.g. Directive on unfair terms of contract or the Directive on the protection of consumers in respect of distance contracts) were founded on the minimum harmonization requirements until almost a decade ago.

The minimum harmonization requirements purport that the Member States have the obligation to transpose the directive’s provisions into the national legal system and respect the minimum level of consumer protection imposed by a certain directive. On the other side, the Member States have the freedom to unrestrainedly establish a higher degree of consumer protection in accordance with the national policy of the respective EU Member State (and in accordance with the founding Treaty). This possibility was especially taken advantage of by the Member States with a traditionally developed policy of consumer protection such as Germany and the Scandinavian countries.

However, a radical transfer from minimum to maximum harmonization requirements marked the last decade of the development of European consumer protection law. All European directives, which were adopted in the last couple of years in the area of consumer protection law (e.g. Directive on unfair commercial practices, Directive on consumer credit, Directive on the protection of consumers in respect of certain aspects of timeshare activities, or the new Directive on consumer rights) require maximal, i.e. full harmonization of the Member States’ law with EU law. Maximum harmonization entails that the Member States do not have any more merely the obligation to establish a minimum level of protection envisioned by a certain directive, but are also imposed with a maximum level of protection that is allowed. Such an approach has been continuously affirmed in the case law of the European Court of Justice in Luxembourg.\(^{18}\)

The consequence of this shift in approaches is the fact that the Member States had to amend the existing provisions to the detriment of the consumers. This is evident in the example of the consumer’s right to unilateral termination of a contract within the new Directive on Consumer Rights, which replaces previous provisions on consumer contracts concluded away from the business premises of a trader. Another case in point, distance consumer contracts, where according to previous directives the Member States could establish any deadline for unilateral termination under the condition that it is not shorter than seven days,

which was used to the advantage of consumers, the new Directive, having in mind the maximum character of harmonization, establishes the obligatory deadline of fourteen days that the Member States cannot change or postpone.

II.5 Sources of EU Consumer Protection Law

Several dozen directives that, directly or indirectly, regulate consumer rights represent the most important sources of European consumer law. The following section of this chapter will analyze the seven most important directives in the area of consumer protection law. It can be noted that in the beginning these directives regulated, with a sole exception of the Directive on unfair contract terms, only certain types of consumer contracts, which particularly endangered consumers, such as contracts negotiated away from business premises or contracts on consumer credit. Still, in the last couple of years, what emerges is a tendency of adopting directives with a wider spectrum of applicability, which are not limited to merely one particular type of contract. Such is the case, for instance, with the new Directive on consumer rights.

Directive on contracts negotiated away from business premises

Directive on contracts negotiated away from business premises\(^{19}\) is the first directive in the area of consumer law, which regulates one clearly defined type of consumer contracts. This directive applies to the cases when consumer contracts are concluded at a time when the consumer is particularly vulnerable as he was found in an unexpected situation, most often at home or at the place of work, where the trader offers his products. In these moments, the consumer is not in the position to thoroughly contemplate on his decision and to compare the indicated price and the product with other products, which are alike, or the same products and prices.

This directive is the first one to bring into European consumer protection law the definition of who is to be considered under consumer and trader, which in return specifies exactly the cases in which this special legal regime is to be applied. A consumer is every natural person who acts on the market with the purpose beyond his trade or profession. Even though the directive has been adopted almost thirty years ago, the definition of the term consumer, which it brought forth, was only slightly altered.

What this directive offered and was exceptionally novel was the right of the consumer to unilaterally terminate a contract concluded away from business premises during a period that must not be shorter than seven days. In this way, the consumer is given an additional time period to once again rethink his economic decision and has the possibility to compare the price and characteristics of the product purchased to the characteristics of the same or similar product offered on the market.\(^{20}\)

Prior to the conclusion of such a contract, the trader has the obligation to clearly render the consumer with the right to unilateral termination. If the trader does not do so, the period for


the consumer to unilaterally terminate the contract extends indefinitely, as confirmed by the European Court of Justice in the Heininger case.\(^{21}\) However, the new Directive on consumer rights envisages that this deadline is not anymore indefinite, but is limited to a three months period after the conclusion of the contract.

**Directive on unfair contract terms**

The Directive on unfair contract terms\(^{22}\) established significant limitations to the freedom of which in turn influenced the very core of contract law.\(^{23}\) The provisions of this directive limit the negotiating freedom of a seller as he is prevented to impose to a consumer a contract term that is according to this directive deemed unfair.

In its case law, the European Court of Justice elaborated that the basis of this kind of protection is founded on the idea that the consumer is in a significantly worse position in the contractual relationship than the seller, due to the disparity between their negotiating skills, and the acquaintance with the relevant facts. As a consequence, it is deemed that the consumer will most often agree with the terms of the contract, which the seller compiled beforehand rather than influence them so as to change or supplement them.\(^{24}\)

In this way, the Directive prohibits contract terms, which are contrary to the principle of conscientiousness and honesty, and which establish a significant relationship of inequality between the rights and obligations of the trader to the detriment of the consumer. In the Annex, the Directive notes *exempli causa* of a number of contract terms as examples of terms, which are deemed unfair, but leaves to the national legislation and national authorities in charge within the Member States to decide and determine whether such contract terms will be indeed considered unfair.

As unfair contract terms are considered void, they do not bind the consumer. Besides this classic civil law sanction in the case of such a contract norm, the trader will be sanctioned with certain sanctions of a public law character, above all on the basis of the misdemeanor.

Alongside the prohibition of unfair contract terms, the Directive establishes a request for full transparency of contract terms in consumer contracts. It prescribes that all contract terms have to always be expressed in a simple, clear and understandable manner so that the consumer could comprehend their significance. On the contrary, any disputable contract term should be interpreted to the advantage of the consumer.

In its case law, the European Court of Justice determined that it is the obligation of state authorities of the Member States to *ex officio* examine whether a certain consumer contract

---

\(^{21}\) Case C-481/99 *Heininger* [2001] ECR I-9945


contains unfair contract terms, even when the consumer does not request it, and in case such terms are found, to enforce corresponding legal sanctions. 

In addition to civil law sanctions, which unfair contract terms entail, as the invalidity of the terms of a contract that are found unfair, in most European legal systems the state body in charge is authorized to also determine adequate sanctions of a misdemeanor and administrative character. For instance, from January 1st 2012, in Italy the state authority in charge of the protection of competition law is at the same time responsible for the cases of unfair contract terms.

**Directive on distance contracts**

Directive on distance contracts\(^\text{26}\) regulates the type of contracts that are concluded without a physical presence of the supplier and the consumer at the same time. This directive is a legal answer to the new ways of concluding contracts that emerged as a consequence of a significant development of various modern means of communication. Additionally, this directive as well regulates particular cases of prohibited business behavior, such as the shipment of goods that were not ordered, which is in more detail and more extensively elaborated in the Directive on unfair commercial practices.

Bearing in mind the characteristics of a distance contractual relationship, the directive envisions a detailed set of pre-contractual notifications that the supplier is obliged to provide the consumer with prior to the conclusion of a contract. The goal of providing this information is to give the consumer the opportunity to understand the contract, which he is negotiating and the content of his contractual rights and obligations in the best possible way.

Considering the example of the Directive on contracts concluded away from business premises, this directive gives the consumer the possibility to, within a period that may not be shorter than seven days, unilaterally terminate the distance contract without any legal repercussions to the consumer. The supplier has the obligation to inform the consumer of this right during the negotiation of the contract.

**Directive on consumer sales**

Directive on consumer sales\(^\text{27}\) regulates the contractual relationship between a seller and a consumer in the case of a consumer sales contract. The chief goal of this directive is to legally fully ensure that the consumer gets from the trader the product, which is in conformity with the consumer contract. This directive changed the core of national laws of the Member States by establishing a unique European legal regime for contracts on consumer sales. \(^\text{28}\)

It determines the rules for three basic elements of any contract on sales: quality standard which the consumer may be reasonably expecting, adequate legal means in case the

\(^{25}\) Case C- 168/05 Mostaza Claro [2006] ECR I- 10421


product does not fulfill the stipulated quality standard, as well as matters of the guarantee offered by the seller.  

The directive describes in detail and enumerates cases as examples illustrating what does it mean in practice to consider a product to be in conformity with the contract. For instance, the product sold has to match the description given by the seller and has to have the characteristics of the good that the seller showed to the consumer as a sample or a model. 

In the instance of non-conformity, the directive envisages deadlines, a burden of proof and other legal ramifications. In this way, the seller is accountable to the consumer for the non-conformity within the period of two years from the delivery of the goods to the consumer. If the non-conformity appears during the first six months from the delivery of the goods to the consumer, the burden of proof for the non-conformity is on the trader. 

In cases when non-conformity is determined, the consumer has the right to request the seller to exchange or fix the product. The consumer is left with the right to choose the option. The seller is obliged to fix or exchange the product at an appropriate date. Insofar as it is not possible to eliminate the non-conformity in any of the available ways, or if it would represent a disproportionate burden on the seller, the consumer has the right to choose between an adequate price reduction for the purchased product or the possibility to unilaterally terminate the contract. 

Besides the rules on the non-conformity of goods, the directive regulates the guarantees. Namely, in addition to the general, legislative regime on the guarantee of the quality of goods envisioned by the provisions of this directive, the trader can offer to the consumer also an additional guarantee. The seller can give the additional guarantee or to demand for the consumer to buy it. In the first case, the goal of the guarantee is above all marketing - so as to attract consumers to buy a certain product from the trader who offers this guarantee free of charge as an additional benefit of the product. In the other case, the consumer is given with the opportunity to obtain additional rights regarding the product. 

The directive emphasizes the seller’s obligation to stress the advantages given by the guarantee in comparison to the already legally established consumer rights determined by this directive. This mainly refers to additional consumer rights in relation to the consumer rights given by the guarantee, as well as the time frame in which the consumer has the right to fulfill them. Specifically, this question of the relationship between consumer rights established by the Directive and the additional ones offered by the guarantee is the case of an extensive lawsuit undertaken by eleven EU consumer organizations against Apple. 

**Directive on unfair business-to-consumer commercial practices in the internal market** 

After longstanding negotiations and discussions, in 2005 the European Commission adopted the Directive on unfair business-to-consumer commercial practices in the internal market. 

---

29 Micklitz, Hans W., Jules Stuyck, i Evelyn Terryn, eds., pp. 303-304.  
Due to its broad potential area of implementation and requirements of maximum harmonization, this directive is very significant.\(^{32}\) Namely, the essence of this directive is that it forbids every form of unfair commercial practices in the relationship between the trader and the consumer.

Unlike the majority of other directives in the area of consumer protection law, the Directive on unfair practices is of horizontal significance, i.e. it is applicable, with slight exceptions, to every relationship between a consumer and a trader (and not only, for instance, in case of distance contracts). Additionally, this directive regulates the commercial practices of a trader not only prior, but also during and after the conclusion of a consumer contract.

The Directive envisions a rather complex legal mechanism on the basis of which the commercial practices of a trader are examined and concluded as unfair. Namely, it is composed of three basic steps, whose strictly determined order the relevant state authority in charge of consumer protection has to respect while determining whether a certain trader’s behavior is allowed. As cases in point serve the first decisions of the European Court of Justice in relation to the interpretation of the directive.\(^{33}\)

As the first step, the authority in charge is obliged to examine whether the specific commercial practices of a trader could fall under any of the thirty-one forms of behavior which are deemed as unfair, and are enlisted in Annex I of the directive. For instance, if the trader represents a certain legally guaranteed right as special benefits, which the trader offers to the consumer, it is always to be deemed as an unfair commercial practice. If a certain commercial practice of a trader represents one of the enlisted forms, it is automatically to be deemed unfair.

However, in case that the state authority in charge determines that the disputed commercial practice of the trader cannot fall under any of the thirty-one forms of commercial practices which are at all times to be deemed unfair, the second step ensues. Namely, at this point the permissibility of a commercial practice is determined on the basis of three so-called small general rules, which reveal whether a certain commercial practice represents a form of misleading commercial practice, an oversight through which consumers are being deceived, or an aggressive practice. The Directive establishes the procedure on the basis of which this examination is to be performed.

Finally, the third and last step represents the application of a general formula in case that a specific commercial practice of a trader does not represent an unfair commercial practice under any of the forms of unfair practices envisaged in the former two steps. This general rule encompasses the cumulative fulfillment of two conditions for a certain commercial practice to be deemed unfair. Firstly, the commercial practice has to be contrary to the


requirements of professional diligence and secondly, it has to materially distort or threaten to materially distort the economic behavior of the consumer who is related to the consumer practice or subjected to it, i.e. the behavior of an average consumer from a consumer group when that practice regards a group.

The directive establishes an average consumer standard as a basic standard for the state authority in charge to implement steps two and three. An average consumer is defined as a reasonably well-informed and reasonably observant and circumspect. Alongside this general standard, the Directive applies the subsidiarity standard of the vulnerable consumer, which is to be interpreted at the greater advantage of consumers.34

The vulnerable consumer includes categories of consumers who are due to a characteristic such as years of age, mental immaturity, physical weakness, are more endangered in respect to unfair commercial practices in comparison to the average consumer, thus a higher level of legal protection is necessary.

The European Court of Justice has not yet interpreted the exact denotation of the average and vulnerable consumer in practice, which has to be done on a case-to-case basis in order to achieve a uniform interpretation of the terms in all the Member States. Up to this point, the Court has done so in only two cases - Ving Sverige35 i Pereničova.36

The aforementioned definition of the average consumer was exposed to virulent criticism since this artificial, legal definition does not correspond to the actual average consumer as an actor on the market. A consequence of this definition of the average consumer is that many traders' practices, which in essence represent unfair commercial practices, evade the implementation of the mechanism envisioned by the directive. The European Commission justified this position as necessary in the need to establish an ever-greater degree of inter-border movement of goods and services in between Member States, which would be endangered by the introduction of a stricter legal regime.

Contrary to the normative section, which requires total harmonization of the legal systems of the Member States with the basic text of the directive, the directive's implementation mechanism and sanctions differ from Member State to Member State. Certain Member States, as for example Great Britain and Italy, decided that the authority in charge of the implementation of legal acts on unfair commercial practices is the same body also in charge of protection of competition rights. In Finland and Denmark, the so-called "Scandinavian model" implies that the chief authority in charge of suppressing unfair commercial practices is the Consumer Ombudsman. In Great Britain, unfair commercial practices, in certain cases also represent a form of a criminal offense that leads to the criminal liability of trader, i.e. the trader's representative.

36 Case C-453/10 Jana Pereničová and Vladislav Perenič v SOS financ spol. s r. o. [2012] ECR I-0000.
Directive on consumer credit

Directive on consumer credit\(^{37}\) regulates a separate type of consumer contract, the contract on consumer credit. As in this contractual relationship, the consumer is exposed to the trader, usually a bank, as a financially powerful institution, it is necessary to provide him with an additional level of legal protection in comparison to the classical credits which are above all given to legal persons.\(^{38}\) Therefore, the contract on consumer credit was also one of the first areas regulated by a unique European legal act. The first directive was adopted as early as 1987, which was as a result of the evolution of the financial service market, replaced in 2008 by a significantly more extensive new European Directive on consumer credit.

The new directive develops and supplements the existing rules from the former directive, emphasizing complete transparency of the contract and the consumer credit as well as of the entire process related to the conclusion of the contract. Some of the most important characteristics of this directive encompass a range of pre-contractual notifications, which the trader is obliged to show during advertisement. The trader is also obliged to provide the consumer with the necessary notifications in a standardized form prescribed by the Directive, prior to the conclusion on consumer credit. For example, every credit advertisement has to give an account of the respective interest and all other expenses of taking a loan, with a clear designation of the annual interest amount. In addition, it is clearly noted which information should be comprised in the very body of the contract on consumer credit in order to allow the consumer full transparency of legal work.

One of the most important consumer rights guaranteed by this Directive is the right to unilateral termination of the contract on consumer credit within fourteen days of its conclusion, without the need to provide any kind of explanation to the trader. In this way, the consumer is given another time period to think his contractual terms through, and to terminate it without any negative legal consequences to him. Additionally, the consumer has the right to an early credit repayment, which prevents the traders to prohibit such a practice as has previously occurred.

New Directive on consumer rights

In October 2011, after years of negotiations and reaching compromising solutions, the European Union adopted the new Directive on consumer rights.\(^{39}\) Prior to the adoption of the new Directive, the Proposal for a Directive on consumer rights\(^ {40}\) was published in October 2008.\(^ {41}\) Due to fervent opposition of a number of Member States, as well as certain consumer associations, the adopted text of the Directive was to a significant degree less

---


ambitious and less extensive in comparison to the Proposal, and especially compared to the initial proposal of the Commission from 2004.

Namely, the initial idea of the Commission in 2004 when the drafting of the new Directive began, was to cover the provisions of eight existing directives which would be incorporated into one legal text, based on the requirements of maximum harmonization which would in return significantly alter the legal regime of consumer protection in the Member States of the EU. However, due to the aforementioned opposition on the part of the Member States, such an ambitious project was dropped. Consequently, the published Proposal incorporated the provisions from four rather than eight directives.

However, as the adopted text of the Directive is significantly less extensive even in comparison to the Proposal, it altered in entirety the provisions of only two directives: Directive on contracts negotiated away from business premises and Directive on distance contracts. Additionally, the provisions of the Directive on consumer contracts on consumer sales are partially altered and supplemented, while the Directive on unfair contract terms is only slightly amended.

Despite the fact that the adopted text is significantly less extensive in comparison to the one previously drafted, together with the Directive on unfair commercial practices, this directive represents the most important source of European consumer protection law today. Contrary to the directives, which it partially altered or supplemented, the new directive is founded on maximum harmonization, which leaves much less latitude for the Member States to independently regulate consumer law.

Newly unified legal acts on the trader’s obligation to inform the consumer prior to the conclusion of the consumer contract should be noted as one of the most important essential changes brought by the new Directive on consumer rights. The information requirement, as previously emphasized, represents the most important instrument of consumer protection envisioned by European consumer law. However, prior to the adoption of this Directive, information requirements were regulated in an inconsistent manner, which it strives to surpass through the adoption of unified rules for every consumer contract.

Alongside general rules on information requirements which are enforced during the conclusion of every consumer contract, the directive prescribes an additional set of legal acts in case of distance contracts, as well as contracts negotiated away from business premises which are in accordance with the specificities of these two types of consumer contracts.

---

44 Directive 2011/83/EU on consumer rights, Article 5.
Additionally, the total price of all products (the terms product in European consumer protection law denotes goods as well as services) have to explicitly state the total price of the product including all taxes, fees and other possible charges, and to be presented in an understandable and clear fashion. Furthermore, the traders are obliged to inform the consumer that it is the consumer who bears the costs of returning the goods in case of contract termination.

The consumer has the right to unilateral contract termination within fourteen days, rather than seven days as prescribed earlier by the Directive on contracts negotiated away from business premises and the Directive on distance contracts. However, unlike the previous solution which was based on the requirement of minimum harmonization when the Member States could independently establish any period longer than seven days for unilateral contract termination, the new Directive obliges all the Member States for the legal deadline to be fourteen days, without leaving any latitude for the Member States to designate a longer deadline which would result in better consumer protection. In case of unilateral contract termination, the trader is obliged to reimburse the consumer within fourteen days, as well as to compensate him for the costs of the delivery of goods.

Member States are obliged to transpose the provisions of the new directive into their national legislation no later than the end of 2013. The application of the directive's provisions has to begin the latest within six months upon the expiration of the deadline for the transposition of its provisions, more specifically by mid 2014. Member States have already began adjusting their national legislation to the provisions of the directive, and the European Court of Justice referred to it as a very important source of law in several recent decisions.

Serbian Consumer Protection Law from 2010 is to a great extent aligned to the Directive on consumer rights, having in mind that many provisions of the Proposal for the Directive from October 2008 were incorporated in the final text of the Serbian law.

II.6 Institutional Models of Consumer Protection in the EU Member States

As it was already mentioned, in terms of consumer law implementation mechanisms EU Member States practice two basic approaches: administrative, which denotes the existence of certain administrative authorities (as for e.g. Commission for the Protection of Competition) and the civil law approach, which suggests the enforcement of general civil law sanctions (on the basis of general competence courts). The administrative approach is prevalent in practice and can be found in several various forms. A review on several different system from a number of EU Member States, which represent the distinct methods of the Member States’ legal systems to come to terms with the same requirements of the consumer acquis in regards to guaranteed consumer rights.

46 Directive 2011/83/EU on consumer rights, Article 5. (c) and (e).
48 Directive 2011/83/EU on consumer rights, Article 9.
Civil law approach

**Germany** is the best representative of the civil approach to the policy on consumer protection within the EU, where the Federal Ministry for Foods, Agriculture and Consumer Protection is in charge of consumer policy, consumer protection and general issues of consumer information. Protection of consumers’ economic interests in Germany is above all accomplished in front of general competence courts and special rules of civil procedure. The provisions on consumer protection are incorporated above all in the German Civil Code and the Law on unfair commercial practices.

**Austria** also mostly falls within the civic direction in terms of the implementation of consumer policy. The ministry in charge at the national level is the Federal Ministry of Employment, Social Policy and Consumer Protection. Its jurisdiction for the general consumer policy is above all of a coordinating character, while having direct authority of implementation in the area of product safety. Additionally, in accordance with the federal organization, federal units in Austria are in charge of implementation, whereas the Federal Ministry serves mostly as last instance. According to the civil law approach, actions contrary to the provisions of consumer law are sanctioned through court decisions in civil proceedings. (Provisions regarding liability for defective products are part of a special Law on product liability. Dozens of administrative bodies are also considered in charge for the implementation of certain sections of consumer law and have the option of imposing fines under the law.)

Similarly as in Germany, in Austria consumer organizations have a powerful role in consumer representation in court. Additionally, mechanisms for alternative (out of court) dispute resolution are very developed, which is after all the priority of the European consumer policy in general.

**Administrative approach - a body subordinated to the Ministry**

In **France**, the General Directorate for Competition, Consumer Issues, and the Prevention of Fraud within the Ministry of Economy and Finance is in charge of the creation and the implementation of consumer policy. As an oversight body, the General Directorate has the authority under the law to find violations of the Consumer Protection Law and to prepare reports that are further sent to the public prosecutor, who has the discretion of whether to take legal action. However, in accordance with European law, and specifically with the Regulation on Cooperation in the Area of Consumer Protection, the General Directorate was also given the authority to impose measures, injunctions and settlements. Additionally, consumers are provided with a variety of procedures when it comes to small claims (e.g. neighborhood judges).

---

53. Ibid.
In the Netherlands, the Netherlands Consumer Authority functions under the supervision of the Ministry of Economic Affairs, Agriculture and Innovation, which is in charge of the general consumer policy. The Authority has direct powers to oversee the enforcement of the legal acts comprised in the Dutch Civil Code, which regulate consumer protection law. The majority of EU directives in the area of consumer protection, with the exception of the Directive on consumer credit and Directive on distance sale of financial services, fall within the scope of this Authority. Additionally, in comparison with the Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers, the Authority has merely investigative powers, while the public prosecutor is in charge of prosecuting the perpetrators. The Authority's power under public law is the power to impose sanctions, which also include occasional pecuniary fines, while under private law, it is the power to initiate proceedings before courts for the injunctions of the practice, which led to the specific violation of collective consumer interests. It should be noted that the Dutch Consumer Authority can take action only in cases of collective violations of consumer rights, while individual consumers can turn to general civil law instruments.

Administrative approach - joint competition and consumer protection bodies

In the United Kingdom, the Department for Business, Innovation & Skills is in charge of the general consumer policy, while the Office of Fair Trading (OFT) is the body in charge of the protection of competition and consumer rights. The Office has a holistic approach to its work, which alongside the mandate in the area of competition also entails competences necessary for the implementation of consumer policy, including the provision of advisory services to consumers through "Consumer Direct." Part 8 of the Enterprise Act (2002) allows OFT (as well as other enforcers) to request from the courts to pronounce an injunction of the practice that caused the injury (Enforcement Order), as well as other measures. Additionally, OFT is in charge of licensing on the markets of consumer credit and real estate agencies.

Ministry in charge of consumer protection in Italy is the Ministry of Economic Development. This Ministry is in charge of the implementation of a broad spectrum of European consumer law, with the exception of directives on unfair and comparative advertising and very important Directive on unfair commercial practices, which is implemented by the Authority for Competition Protection. In these aforementioned areas, the Authority has the power to initiate proceedings ex officio, as well as investigative powers, including the right to access all relevant documents and request relevant documents or information from anyone, the option of conducting inspections, etc. When an injury is determined, this body can prohibit commercial practices which it deems unfair and to pronounce an appropriate fee. A recent set of decisions that this body made in cases against Apple, which were affirmed by the decisions of the Administrative Court in Rome, reveal that the envisioned mechanism functions effectively in reality. In case of non-compliance with the imposed measures,
additional fees are foreseen. Affairs in the area of competition and consumer protection are in terms of organization located in two separate General Directorate (highest internal organizational unit) within the Commission for the Protection of Competition.

Poland is also an example of a EU Member State where the authorities in the area of implementation of consumer policy are adjoined to the body in charge of the protection of competition. Plans for the merger of the National Consumer Agency and the body in charge of the protection of competition were announced in Ireland as well. Necessary legal amendments were announced for 2012, however until this date there is no information on the state of affairs of the merger.

Administrative approach - Scandinavian model (Consumer Ombudsman)

Scandinavian countries have a highly developed tradition of consumer ombudsmen as the most significant authorities in charge of protection of consumer rights. Still, it is the Swedish consumer ombudsman that is the oldest. Consumer ombudsmen are supported by executive agencies/bodies, which to a certain extent have different statues, but have a common characteristic reflected in the tendency of merging with agencies/bodies in charge of competition protection.

In Denmark, the Danish Competition and Consumer Authority, former Danish Consumer Agency, another example of an EU country where the authorizes in charge of competition and consumer protection merged, is part of the organizational structure of the Ministry of Economic and Business Affairs which is in charge of the consumer policy, consumer protection and consumer affairs. This body represents a kind of executive office for the Danish Consumer Ombudsman. The Consumer Ombudsman is an independent state body, which primarily oversees the compliance of business affairs with the Danish Marketing Practices Act, but also with numerous legal provisions under civil law, which stem from other legal acts on consumer protection. The Ombudsman is authorized by law to impose penalties for certain injuries of the law, in the name complainant to initiate civil and criminal proceedings before the courts, as well as to bring interim injunction.

In Sweden, alongside the Ministry of Justice, which is in charge of consumer protection policy, the Ministry of Agriculture, Food and Consumer Affairs and the Ministry of Finance are also in charge of consumer issues. Consumer Agency and Consumer Ombudsman, National Board for Consumer Disputes, Estate Agents Inspectorate, Market Court and the Travel

Guarantees Board implement the Government's consumer policy. The Agency is an independent state body, which was founded in the 1970s so as to implement the government's policy concerning consumers and to guarantee the protection of consumers and their interests. The head of the Agency is the Consumer Ombudsman who is accountable to the Ministry of Agriculture. The Agency initiates a legal action against a trader in Commercial Court or issues an injunction order in case of unfair commercial practices, unfair contract terms in contracts, false information on a price, as well as in case of dangerous products. It does not deal with single questions and does not intervene in individual disputes. This is being done by the National Board for Consumer Complaints, which bears the responsibility to investigate disputes between consumer and traders, and to suggest the best possible option for resolving the dispute. Municipal ombudsmen, as in other Scandinavian countries, offer advice to individual consumers.

In the case of Finland, following the examples of Denmark, United Kingdom, Italy and Poland, the Finish Competition Authority and Finish Consumer Agency merged into one body on January 1st 2013 - Finish Competition and Consumer Authority. The Ministry of Employment and Economy has an administrative role in relation to consumer issues such as opinions concerning decision-making within the EU and the development of the European consumer legislation, as well as regarding cooperation with other Scandinavian countries. The General Director of this body is at the same time the Consumer Ombudsman, whose mandate is to ensure, in cooperation with municipal consumer advisors, provincial state offices, municipal health inspectors and the advisor on debt and other financial transaction, the economic, health, and legal status of consumers as well as to oversee the compliance with consumer legislation.

---

70 Sweden Country Profile.
III. Legal and Institutional Framework of Consumer Protection in Serbia:

Elements and Deficiencies
This chapter presents an examination of the legal and institutional framework of the consumer protection policy in Serbia, above all in the sense of the general law, which regulates this area. Besides the representation of the general framework encompassing consumer protection policy, the aim of this chapter is also to pinpoint specific problems regarding the implementation mechanisms.

Additionally, this chapter describes the results of the research conducted among consumer protection organizations, through an electronic survey as well as through semi-structured interviews with certain organizations.

### III.1 Legal Framework

#### The Constitution of the Republic of Serbia

Consumer protection in the Republic of Serbia is above all standardized through Article 90 of the Constitution of Serbia, which envisions it as a constitutional obligation of state authorities. In this manner it acknowledges consumer protection as a particular policy in the legal system of the Republic of Serbia. The aforementioned article of the Constitution specifically prohibits all actions, which are directed against the health, safety and privacy of consumers, including dishonest actions on the market.\(^\text{74}\)

#### Stabilization and Association Agreement

The Republic of Serbia assumed the obligation of consumer protection by signing the Stabilization and Association Agreement. Article 78 of the SAA requires the cooperation of contractual parties on the harmonization of consumer protection standards in Serbia with the standards in force in the European Union. Specifically, through points a) to e) of the same article, Serbia is required to develop an active consumer protection policy in accordance with EU law, to improve information access, develop independent organizations; harmonize its legislation with the consumer law of the EU; ensure effective legal consumer protection; to guarantee the oversight of authorities in charge of rules implementation as well as an adequate access to justice; also to ensure an exchange of information on dangerous products.\(^\text{75}\) It is important to emphasize that this article requires from Serbia to harmonize the standards of consumer protection, which means that Serbia's obligation is not only to transpose the respective EU directives into its legal acts but to also ensure that an adequate level (standard) of protection which corresponds to the standards within the EU is reached through the implementation of these legal acts.

#### Consumer Protection Law

The legal framework of consumer protection policy consists of, above all, the Consumer Protection Law\(^\text{76}\), which was adopted on October 12 2010, and implemented from January 1 2011 onwards. The Law regulates consumer rights, conditions and means of their protection, rights and obligations of associations, which act with the goal of reaching protection, out-of-

\(^{74}\) Constitution of the Republic of Serbia, "Official Gazette of the Republic of Serbia", No. 98/06\(^\text{b}\), article 90.

\(^{75}\) Stabilization and Association Agreement between the European Communities and their Member States of the one part, and the Republic of Serbia, of the other part, Article 78.

court consumer dispute settlement, and rights and obligations of state authorities in terms of consumer protection. This Law implements fifteen chief EU directives from this area and establishes a legal framework, which facilitates the alignment of consumer protection in Serbia to European standards.

Unlike the provisions of the Law on Obligations (LOO) in the area of contractual law, which are usually of a dispositive nature, i.e. they apply unless the parties do not agree otherwise, the provisions of the CPL are imperative. For instance, the ORL rules concerning a contract on travel organization are for the most part dispositive. On the other hand, the CPL rules, which guarantee to the consumer certain rights in the course of contract conclusion in tourism, are imperative.77

According to the Law, consumer rights encompass: basic needs regarding availability of the most essential products and services; safety in the sense of protection from harmful or prohibited goods, the choice of various goods and services that have acceptable pricing and quality guarantees; participation, or in other words the representation of consumer interests in the process of consumer protection creation; legal protection; education leading to a proper and reliable choice and to an awareness of consumer rights and obligations; right to a healthy and sustainable environment. The Law establishes that the consumer cannot waive the rights guaranteed by this law.

Article 4 of the Law determines the area of its application. The drafting of the Consumer Protection Law (2010) was surrounded by a fervent debate on Article 5, which in the initial draft prescribed that in case of "conflict of laws" with the Consumer Protection Law in question, the latter is to be applicable. During the interviews conducted as part of this study, certain consumer organizations expressed their regrets, as this provision did not remain in the final content of the Law. In the academia, on the other side, the prominent opinion was that such an article would be meaningless and would lack a legal consequence, as well as contrary to the Constitution. However, it is necessary to reflect once more upon this controversy. In the subsequent changes to the Law, it would be suitable to above all clarify the legal situation in which CPL is applicable, and specifically emphasize its subsidiary application. In that sense the experts of the project “Strengthening consumer protection in Serbia,” financed by the EU, gave the following suggestion:

The provisions of this law are applicable to all consumer relations, all consumer contracts and all products and services that are likely to be used by the consumers, to the extent in which there are no specific provisions brought with the same goal in sectorial or vertical laws to regulate subject relations, contracts, products or services and to ensure a higher level of consumer protection.78

Additionally, it should be emphasized that the rule "lex specialis derogat legi generali“ does not lead to the exclusion of CPL in any area where there is a sectorial law. Conversely, sectorial law in the majority of cases does not deal with additional obligations towards consumers. Thus, there are several possible legal situations and the exclusion of CPL applicability occurs merely when a separate law explicitly derogates the applicability of its specific provision.

77 Karanikic Miric, Marija.
The Law further defines the terms, which are being used in wide consumer-trader relations. In accordance with the respective provisions of consumer law in EU, the Law defines as a consumer solely the individual who buys a certain goods for nonbusiness related practices or other noncommercial practices. A trader is every natural or legal person, who acts on the market for business or other commercial purposes. The Law defines also the following terms and relations: consumer contract, contract on sales of goods, goods, distance contract, means of distance communication, permanent data carrier, contract concluded away from business premises, business premises, purchasing order, products, financial services, professional diligence, manufacturer, joint contract, auction, public auction, selling price, unit price of goods, price per hour or other unit of time, business, contractual provision, damage, contract on service provision, service of general economic interest, tourist travel, contract on timeshare, contract on permanent holiday benefits, contract on resale assistance contract on enabling exchange of timesharing real estate and out-of-court consumer dispute resolution. Although the definition of terms sought to align them with the consumer aquis of the EU, certain inaccuracies arose in some of the definitions, which are largely the consequence of inadequate translations from English into Serbian. Such inaccuracies can be noticed already in the definition of the consumer (e.g. the term "product" is translated as "roba", term „buys” as „pribavlja”), as well as in the use of the term „trgovac” as the translation for the English term "seller" from the Directive 1999/44/EC.

With the aim of providing better and timely notifications to the consumers, the Law envisions for the trader to emphasize in an unmistakable, easily visible, and legible fashion the selling and unit prices of goods and services, as well as the price per unit of time if the service is charged by the hour, and additional costs. In case the selling price equals the unit price of the goods, it is sufficient to display merely the former. The price of the goods is emphasized on the very goods (packaging), in the price list and in the shop window, while previously packaged goods have to have both the sales and the unit price indicated. In terms of services, the trader is obliged to compile and indicate a price or list of the services in a way, which allows the consumer to easily notice the prices. For instance, catering facilities, which provide foods and drinks related services must indicate the prices on the tables, as well as at the entrance of the object, while facilities which provide accommodation services must specify the price of accommodation in a visible place, the accommodation fee in rooms and at the reception, as well as the price of foods and drinks in price lists available to the consumers in sufficient numbers and in appropriate places. Advertising is done by emphasizing both the sales and the unit price of the goods/service, while in case the price of the service is charged per unit of time, it is necessary to state the price of the service per unit of time. For the goods or service purchased, the trader is obliged to give a receipt with all relevant data.

According to the Law, within the goal of notification, the trader is also obliged to inform the consumer prior to the conclusion of the contract of the basic characteristics of the goods or service, information on the trader, the sales price, the mode of its calculation and additional costs, the methods of payment and the manner and time of its delivery, as well as the

---

procedure for consumer complaints. Additionally the Law obliges the trader to familiarize the consumer with the right to unilaterally terminate the contract and the guarantee terms, and other information related to the duration of the contractual obligation.

Unfair trading

The Law prohibits unfair trading, and the burden of proof is on the trader to prove the accuracy of all the information related to the contract. Unfair commercial practices, according to this law, denotes that the trader operated contrary to the requirements of professional diligence, as well as materially distorted the economic behavior of the consumer by not allowing a sound choice meaning the decision would not have been made in appropriate conditions.

Misleading commercial practices, aggressive business practices as well as breach of the requirement to inform are also deemed unfair. Misleading is considered to be providing false information or misleading consumers in terms of the nature and existence of a product and its basic characteristics, the obligation of a trader and his position, consumer rights etc. Deceiving occurs also when the trader fails to give the consumers relevant information or gives false claims, which may mislead the consumer, or hides relevant information or provides them in an inadequate or untimely fashion. The Law envisions a series of cases, which are to be considered as misleading practices. In most cases, deception revolves around the provision of false claims, which may mislead the consumer or may lead a behavior that he would not otherwise undertake. False claims refer to a trader's claims of acting in accordance with the respective code of behavior when in reality it is not the case, respecting a code approved by a state authority or certain organization, behaving on the market according to the approval and endorsement of a state authority or certain organization, false claim about the date and the availability if the product so as to persuade the consumer into a purchase without a delay, false claim about the compatibility of the product with relevant provisions, false claim about the termination of business practices or the change of business premises, about the functions of a certain product, rewards or promotional games.

In addition, other dishonest practices of a trader are considered to be misleading, such as unauthorized display of quality labels and alike, covering causes for a reasonable doubt that an ordered product may be delivered, representation of consumer rights as special benefits of the purchase, endorsing products of another trader, providing false information about the conditions on the market, abuse of terms “warranty” and “free” etc.

Abusive business practices, on the other side, consider such behavior on the part of a trader who through harassment, coercion or prohibited influence (in the sense of abuse of a position of power), undermines the freedom and behavior of a consumer. This may refer to types of behavior such as visiting the consumer with his consent, addressing on numerous occasions the consumer against his will, avoiding to appreciate consumer rights from the insurance policy, informing the consumer regarding possible reverberations on his job or existence unless the consumer purchases the product etc. The Law envisions also more specific criteria for establishing abusive business practices.

Codes of behavior, as agreements of traders or decisions of individual traders, determine the types of market actions and should represent an obstacle for the aforementioned commercial practices. The Law envisions that the Ministry in charge of consumer protection questions
propones the traders who adhered to a certain code to abide by the respective code as well as to inform consumer of its existence and content.

**Distance contracts and contracts concluded outside of business premises**

The entire chapter of the Law refers to *consumer protection in the exercise of rights from distance contracts and contracts concluded outside of business premises*. Prior to the conclusion of such contacts, above all the duties of informing are determined. These encompass the information on the conditions of a unilateral termination of contract, trader's address and mailing address for complaints, the existence of a code of behavior and the manner of accessing it, enjoyment of protection according to the Law, possibilities extra judicial dispute settlement.

When it comes to financial services, the consumer must be notified about the basic characteristics of the service, total price, risks, the period of validity of given notifications as well as the method of payment. In terms of e-commerce, the consumer has the right to gain access to the stored contract and alter it prior to sending the order, as well as to access the code of behavior, while the trader is obliged to familiarize the consumer with the instructions for the conclusion of the contract, the manner of accessing the contract and editing errors.

The right to unilateral termination of distance contracts or contracts concluded outside of business premises, according to the Law entails that the trader hands to the consumer the form for unilateral termination as well as to inform him on its title, postal and electronic mail address to which the form should be sent. Similarly, the duty of the trader is to inform the consumer on his rights as well as the conditions related to the return of goods and money. In the case of e-commerce, this form should be made available electronically so as the consumer could fill it out. The Law envisions that the more detailed content of the form for the unilateral termination of a distance contract and a contract concluded outside of business premises is prescribed by the Minister in charge or consumer protection affairs, which was accomplished with a respective rulebook (that was on July 16th 2011, when the implementation of CPL began more than half a year prior to it).

The law envisages that the contract outside of business premises is concluded at the point when the consumer signs the order (which incorporates also the form for unilateral contract termination), or when he receives a print copy. Prior to the conclusion of a distance contract, the trader must familiarize the consumer with all the aforementioned specifi cities. If means of communication limit the trader in doing so, he has to notify the consumer in written form, the latest with the delivery of the goods or the commencement of the service. In the cases of these contracts, the Law obliges the trader to act upon the order the latest within a period of thirty days if not specified differently, while he cannot request a prepayment from the consumer.

The consumer has the right to within fourteen days from the day of conclusion of the distance contract or contract concluded outside of business premises to unilaterally terminate the contract without stating the cause, which releases him from all contractual obligations. A declaration on contract termination is considered as timely if the consumer returned the goods to the trader in the same period. The statement is sent in written form or a permanent sound carrier, while the consumer may independently formulate it or use the form provided by the trader on the basis of legal provisions. In case of e-commerce, the trader is obliged to facilitate contract termination for the consumer by providing such a form on his website.
Legal consequences of unilateral termination of distance contracts or contracts concluded outside of business premises purport that with the termination cease obligations of the contractual parties, while the trader is obliged to repay the sum to the consumer the latest within a thirty day period, or when it comes to contracts of sales of goods when he receives the goods or the proof that the consumer sent the goods. In terms of contracts on the provision of financial services, the date for the repayment is also thirty days. The Law envisioned that in the case of unilateral contract termination also the legal effect of all related contracts ceases.

Additionally, the Law also envisioned exceptions on unilateral termination of distance contacts. Those exceptions come into force in cases when the provision of a service began before the date for unilateral contract termination, with explicit consent from the consumer, further when the price of the negotiated goods or service depends on the fluctuations on the financial market, if it is sealed audio goods, video or software content which the consumer unsealed or in instances of games of chance. When it comes to distance financial services, the consumer cannot terminate a contract if their price depends on the fluctuations on the financial market, if these are short-term insurance contracts concluded for a period shorter than one month, or if it is a contract realized with the explicit consent of the consumer.

The exceptions to the right of unilateral termination of contracts concluded outside of business premises related to contracts on the delivery of food, drinks and other goods for everyday use, and if the consumer with the goal of removing imminent danger requires the trader to execute a contractual obligation without delay.

As for the use of certain means of distance communication, CPL prohibits the traders to indirectly advertise through telephone, fax, electronic mail, and other means of distance communication without the consent of the consumer. However, if the consumer has agreed to such a form of advertising, the trader is obliged to firstly, notify the consumer on the commercial purpose of communication. Similarly, the shipment of goods or provision of services, which the consumer has not ordered, is prohibited. As the lack of consumer's rejection is not deemed as accepting the offer, such shipment according to the Law as an unconditional gift, and does not represent a source of consumer obligation. Such an injunction is not valid if the trader has notified the consumer that he is not obliged to accept the goods or service.

Unfair Contract Terms

Consumer protection in the exercise of rights contained in contracts with unfair contract terms is the following legal unit. Only if the contract terms are clear and understandable, they are legally binding for the consumer. The Law envisions the obligation to familiarize the consumer in advance with the content of contract terms, so that they are binding for the consumer only through his direct consent. If a term is disputable, it should be interpreted at the advantage of the consumer.

Unfair terms, according to CPL, are deemed void. These are defined as terms, which disproportionately bind the consumer, burden the consumer without a reasonable justification, distort basic expectations of the consumer, which are opposed to the public request in regards to trader's behavior and of the principles of conscientiousness and honesty. While determining the unfairness of a term the Law prescribes taking in account the criteria of the nature of goods and services, the circumstance of the conclusion of the
contract, the rest of the contract terms or other related contracts as well as the manner of reaching consent and notifying the consumer on the content of the contract.

According to the Law instances of unfair terms may be such as contract terms which limit or exclude the liability of the trader for the death or injuries of a consumer, limit the obligation of a trader to assume an obligation transferred to another individual, limit or exclude the right of the consumer to bring an action and make use of legal means or restrict the consumer to familiarize himself with the evidence or the burden of proof is unjustly transferred from the trader to the consumer. In addition, the Law notes the cases in which the terms are to be deemed unjust. On multiple occasions, the problem is in the absence of reciprocity in the trader-consumer relations. For instance, the Law prescribes that terms which entitle the trader in case of a consumer's breach of obligations if this right is not guaranteed to the consumer as well (retaining everything that the trader received, the right of the trader to unilaterally terminate a contract). Other unfair terms concern the restriction of consumer rights in cases: when the trader or a third party has not fulfilled his obligations, when the compensation paid by the consumer is significantly greater that the damage caused, when there is no adequate notice of trader's right to unilateral contract termination, when the trader increases the concluded price etc.

**Exercising the rights from a contract on the sale of consumer goods**

When it comes to consumer protection in exercising rights from a contract on the sale of consumer goods, the Law prescribes that the trader is obliged to deliver the goods the latest within a period of thirty days. The risk of damaging the goods until the point of delivery rests upon the trader, which is after the delivery transferred to the consumer.

Articles of the Law which are concerned with the conformity of goods purport that the delivered goods is in accordance with the contract, or in other words that its characteristics, quality an functions are as expected by the consumer and corresponding to the goods of the same kind. Therefore, for the non-conformity of goods at the moment of transferring the risk onto the consumer, the trader is liable even if the consumer knew about it, but the trader declared the goods as conforming to the contract. However, if it was know to the consumer at the moment of contract conclusion, the trader does not bear the liability.

In regards to the non-conformity of goods, the consumer has a couple of legal options. Above all, he has the possibility to solicit the removal of nonconformity (through repair or exchange) free of charge. However, if the first option is not possible, the remaining options are price reduction and request for contract termination. Adequate repairs or other actions with the goal of nonconformity removal have to be done timely and all charges are borne by the trader. If consumer rights cannot be fulfilled through the removal of nonconformity is in a way prevented, the consumer has the right to request contract termination except in cases of a minor nonconformity of goods. The liability of a trader in this context lasts for two years from the transfer of the risks to the consumer, while in case of a second-hand goods sale a shorter period can be negotiated.

The guarantee, in this context, entails the provider legally binding promise in relation to the goods, while the warranty card is a document denoting the information on the warranty, which once again fulfills the conditions of clarity, readability, data on the warranty giver and consumer rights stemming from CPL.
In terms of the right to reclamation, the consumer can take advantage of it in order to enforce his rights, which are already noted in the text, while the consumer is obliged to respond with a solution proposal.

The Law foresees protection possibility in terms of defect goods in the goods does not meet the expectation, which may have been reasonably fulfilled. The consumer has the right to set a motion for the compensation of damage if he proves that there is a correlation between the caused damage and the product defect. The manufacturer is accountable for the products' damage regardless whether the defect was known or not. The manufacturer will be released from liability if he succeeds in proving that the good was not placed on the market, that the defected appeared subsequently, that the products was not manufactured for the marker or that the defect is the consequence of circumstances upon which he had no influence, for instance product advertisement in line with respective legal acts brought by the authority in charge. The manufacturer may also be released of liability if the consumer himself contributed to the damage. The Law foresees also joint liability if more individuals are responsible for the damage.

The deadline for damage compensation is three years from the day that damage and defect were determined, while in any case the date for this request is ten years from the moment when the defective product was placed on the market.

**Contracts on provision of services**

When it comes to the consumer protection in terms of fulfilling their rights from contracts on service provision, the first articles of the Law concern the quality of the material in contracts according to which the trader is obliged to manufacture a certain object the notification of a consumer on the deficiencies of the material as well as the liability for the damage stemming from material deficiency. A service, according to CPL, is provided when the contracted work is finalized, while the contracted date of provision or if such does not exist, an adequate date needed for the provision of a similar service is foreseen.

The trader has the possibility to entrust the completion to a third party. For any additional services, the consent of the consumer is needed, whereas the Law prescribes that in case consent is impossible to attain, the pricing of the additional services had to take into account the total price of the negotiated service. Additionally, the consumer has to be notified if the service or the price does not match the reasonable expectations of consumers. The estimate of the costs of a provision of service refers to the total price of the service if not agreed otherwise, while if the trader does not guarantee the accuracy of the estimate, he cannot request a price increase higher than 15%. The consumer pays the price of a service following its inspection and provision, if not agreed otherwise. The failure to pay the price or it part, may result in the interruption of service provision. The consumer has the option to terminate the contract or to request a damage compensation if the trader cannot provide the appropriate service from the contract or is does not provide it in due term.

Services as well have to be in conformity to what was negotiated, where the Law foresees the same or similar criteria of nonconformity as in the cases of contracts on sale of goods. The consumer may request the provision of the service despite its nonconformity, the price reduction or contract termination.
Service of general economic interest

According to the Law, the consumer has the right to the provision of services of general economic interest, taking into consideration adequate quality and accessible price. The Law envisions a vulnerable consumer, whose specific economic or social standing, living conditions, special needs or other similar cumbersome situations, limit his provision of these services. In order to protect these consumer groups the Government brought the National Program for the Protection of Vulnerable Consumers, following the proposal from the Minister in charge of consumer protection issues and the Minister in charge of social policy issues. The consumer may be deprived of the right to use services of general economic interest if he does not pay fees in accordance with the Law.

On the basis of Article 85 of CPL, the Government has to adopt a National Program for the Protection of Vulnerable Consumers following the proposal from the Minister in charge of consumer protection issues and the Minister in charge of social policy issues. Up to this date, this National Program for the Protection of Vulnerable Consumers was not adopted nor was its draft made public. The term vulnerable consumer in CPL is solely referred to the services of general economic interest.

In regards to the concept vulnerable consumer, the question arises whether it needs to be more encompassing, as well as whether the Serbian term "ugroženi" is adequate as a translation of the English term "vulnerable" which corresponds more to the term "ranjiv" that has already been in a routine use. This term can be extended beyond the area of service of general economic interest. The EU Directive on unfair business practices, which was discussed in the previous chapter, tackles the issue of consumer vulnerability in the sense of the injunction of unfair business practices. Moreover, in the EU, the tendency is to place consumer vulnerability as a horizontal issue in consumer policy. An additional basis for a wide and all-encompassing public debate in 2013 regarding this issue was also a need for a stronger regulation of nondiscrimination and equal opportunity (equal access) principles within the consumer policy of Serbia, a country striving to accede to the EU Single Market.

The trader, when it comes to services of general economic interest, has the obligation to inform the consumer on the consumer right to receive these services at a certain price and quality, various compensations and tariffs for the connection and the use of a service, consumer right to change the service provider etc. The duty to inform refers also to the change of price and tariff system, while the consumer can terminate the contract if he does not agree with those changes. The obligation of a trader further concern a timely delivery of the invoice for the service, as well as a detailed specification of the invoice if the consumer requests it, and establishment of a contact line regarding service provision.

---

Contracts of tourist travel and „time-sharing“

When considering consumer protection in regards to rights provided by the contract on tourist travel and time-sharing, one should begin with the pre-contractual notice. It has to be conducted free of charge and in an appropriate form, and incorporate all the necessary data and information on the travel engagement such as the total price and other costs prior to the travel, the characteristics of the transportation, time and itinerary of the travel, accommodation facility and unit, possible field trips, necessary documents, insurance, conditions for the actualization of the travel, and the information on the trader.

Formalization of the contract is done in an adequate form, while the consumer must receive one copy. The consumer has to be familiarized with all the alterations regarding travel information. According to the CPL, a formal aspect of the contract conclusion entails all specific consumer requests, information regarding the possibility of complaints, date and location of contract conclusion as well as the conditions to abandon a component of the contract. When the trader alters certain contract conditions prior to the tourist travel, he has to notify the consumer in the shortest period, while the consumer has the possibility to accept the changes or terminate the contract and notify the trader of the termination.

The Law envisions a timely and untimely withdrawal from the contracted travel. In the first case, the trader has the right to administrative costs compensation (up to 5% of the value of travel), while in the second case the compensation is determined in relation to the time left until the beginning of the travel. The Law also foresees legitimate circumstances of untimely cancellation under which the trader receives only an administrative compensation. Contract termination due to certain changes i.e. the liability of the trader, the consumer may accept another travel package or may request a refund. The consumer is also recompensed in case of contract termination due to an insufficient number of applicants or an inability to fulfill contractual obligations for which none of the contractual parties are responsible. Special rights for students and pupils are envisioned within this section of the Law, more specifically in terms of their stay and accommodation abroad, class attendance and the provision of all necessary information related to the students'/pupils' host family and to the host country etc.

The conformity of a tourist travel entails that the trader is obliged to ensure the consumer with a travel in accordance with the data and characteristics of the travel, which are enlisted in the contract. The trader is responsible for the aforementioned conformity. For any possible non-conformity, which ensues after the onset of the travel, the consumer may accept other services or legitimately request a compensation of the costs that were the consequence of the change. A request for a proportionate price reduction is justified if the departures from the contract are not remedied despite the consumer's request, while may request for a refund if the departure reflects a violation of quality and the extent of contractual obligations. The non-removal of defects may lead to a contract termination, while the trader bears all the related costs. In case none of the contractual parties are liable for the failure to fulfill the contract and the consumer obligations cease, the costs are divided according to the Law.

The trader or a third party who had the duty to execute that contractual obligation bears the liability for the damage, while the consumer has the right to request damage compensation. The exception follows in case the failure to execute a contractual obligation is a consequence of the consumer's actions. During the course of the travel, the consumer has to have free access to the individual who receives complaints. Additionally, the consumer has
to timely notify the trader or another individual in charge of any defects, on the contrary he loses certain of the aforementioned rights such as price reduction, damage compensation etc.

Similarly, in case of time-sharing the emphasis is on the obligatory pre-contractual notification, free of charge and in an appropriate form, on all the data from the informative forms related to the contracts in question (the contract on time-sharing, the contract on long-term/permanent holiday benefits, contract on assistance during resale and contract enabling exchange). The Government, following a proposal from the Minister in charge of consumer protection and the Minister in charge of tourism, prescribes the content of those forms, as it was done through a Government Regulation from August 2011.\(^\text{82}\) The trader is obliged to notify the consumer on the terms and the ways of receiving such notifications.

The formal terms of contract conclusion entail all relevant data, information, and obligations as aforementioned, in this case related to time-sharing contracts. The consumer has also the option to terminate the contracts within a period of fourteen days without having to state specific reasons. Depending on the (in)action of the trader in terms of the duty to notify and deliver the form for unilateral contract termination, the Law foresees a number of deadlines for unilateral contract termination. With the unilateral contract termination all obligations of the contractual parties cease, while the consumer bears neither the costs nor is he obliged to pay the services provided up that point. If the consumer unilaterally terminates any of the contracts, all the other joint contracts are deemed terminated without any additional costs for the consumer.

The trader has the obligation to provide the consumer with assistance during the resale of time-sharing or the permanent holiday benefits. If the trader fails to do so, the consumer may ask for their redemption.

The trader as well as other individuals who are entrusted with the performance of a job and who participate in the sale of these services, has a joint liability for the execution but also for the failure to execute contractual obligations.

### III.2 Consumer Protection System - Between the Law and Reality

The former section of the chapter focused on the legal provisions of the CPL. This section deals with the implementation provisions of the Law - the consumer protection system. What follows is the analysis of legal provisions, and the actual condition and institutional functionality with references to the stands and opinions brought up in the semi-structured interviews and the accounts of the consumer organizations within the electronic questionnaire. The Law denotes that the Institutions in charge of consumer protection are the Ministry in charge and other bodies within their competence, organizations and associations whose aim is consumer protections, as well as professional chambers and the Chamber of Commerce, and other.

---

Consumer Protection Strategy

In terms of consumer protection system, according to the CPL, the Governments brings a five year Consumer Protection Strategy, following the proposal of the Ministry in charge, so as to protect consumer interests and rights in a wholesome fashion. In order to realize the Strategy with all the long-term goals and activities it incorporates, a Consumer Protection Action Plan is devised.

Until this date the Consumer Protection Strategy has not been adopted despite the fact that the project "Strengthening Consumer Protection in Serbia", financed by the EU, devised its draft. This draft refers to the period 2012-2017. Since the adoption of the Strategy can be foreseen in 2013, the period of the existing draft surely has to be altered in such a way so it would encompass the same the same period as the new European Consumer Agenda, which refers to the period 2014-2020 (and essentially replaces the current European Consumer Policy Strategy 2007-2013).

National Consumer Protection Council

Given the particularly multi-sectorial character of consumer policy and the need to tackle consumer policy issues in numerous other sectorial policies, a good inter-departmental coordination in terms of the design, adoption and implementation of consumer policy is of great significance.

According to the Article 126 of the Law, the Government establishes the National Consumer Protection Council to have a consultative role. Its members encompass the representatives of institutions and organizations, which act in accordance with goals of consumer protection policy - the representatives of states institutions, organizations and associations, as well as independent experts, The Council is founded with the goal of "designing a unique consumer protection policy in the Republic of Serbia, thus its mission is to propose measures and activities for the improvement of consumer protection policy, to prepare of an all-embracing analysis which would bring to the forefront the deficiencies of the system, to participate in the drafting of the Consumer Protection Strategy, to notify the public and report to the Government on all issues of concern to this area."
National Consumer Protection Council is devised as a good mechanism of ensuring inter-departmental coordination (as well as consultations with stakeholders outside of the public administration). However, the National Council was established only in October 2012, and until this date only the constitutive session was held, which reveals that in the domestic policy-making and policy implementation system insufficient importance is being ascribed to the need for inter-departmental policy coordination.

This newly formed body is composed of, alongside the representatives of the Ministry in charge of consumer protection issues, the representatives of the Ministry of Agriculture, Forestry, and Water Management, Ministry of Justice and Public Administration, Serbian Chamber of Commerce, consumer organizations, academic community etc.

Since, for now only the constitutive session of the Council has been held, one cannot speak with greater certainty of whether this body will in fact become the center of inter-departmental and external coordination, and consulting in the area of consumer protection. Additional efforts are required in order to affirm this body, to ensure that sessions are held regularly, and that its decisions/recommendations in the future consumer policy design and implementation are respected. In such a case scenario, the Council would certainly be an adequate place for the deliberation on suggested options (identified through a wide-ranging public debated between the public and civic sector) for strategic documents, which are to be drafted, such as the Consumer Protections Strategy and the National Program for the Protection of Vulnerable Consumers.

Ministry in Charge

The Government of the Republic of Serbia defines consumer protection policy. The Ministry in charge (during the previous two terms it was the Ministry of Trade and Services, i.e. the Ministry of Agriculture, Trade, Forestry and Water Management) is responsible for the enforcement of consumer protection policy. The Ministry in charge is additionally responsible for the drafting of the law regulating this area.

According to the current Rulebook on the internal organization and systematization of positions within the Sector for trade, services, prices and consumer protection functions the Department for consumer protection, which works on the development of consumer policy within a special division, under which functions the Centre for Consumer Protection (also established as a division).87

---

87 The Department for Consumer Protection encompasses work related to: determining and implementing a policy in the area of consumer protection, bringing forward a national and annual consumer protection program and monitoring their implementation; giving proposals for systemic solutions and measures with the goal of policy making and policy implementation in the area of consumer protection; monitoring the application of legal acts which regulate the area of consumer protection and giving expert opinions on their application; implementing activities related to adjustment of national legislation with the legislation of the European Union in the area of consumer protection, carrying out expert affairs related to the work of the Council for Consumer Protection as an advisory-consultative body; monitoring the work and establishing cooperation with consumer protection organizations; participating in the work of inter-sectorial working groups and other bodies with the goal of achieving consumer protection; cooperating with national and international consumer institutions and organizations; proposing and monitoring within its jurisdiction, the content of projects under the European Union program; participating in the preparation of programs and projects from the pre-accession program of the
A certain number of interviewed consumer organizations’ representatives noted that the current position of the consumer protection unit within the Ministry is inadequate, since it is under the sector, which deals with services so that the employees in that sector are above all focused on the jobs related to big and small retail chains, market supply and alike. Such an organization is unfavorable, not only because the employees do not prioritize consumer policy due to overburdening with the aforementioned questions, but also since the focus and approach of these policies is outright contrary - i.e. it lies with the actors from whom the consumers most often seek protection.

**Inspection Oversight**

Inspection oversight is done by the legally defined ministries through inspectors in charge of performing inspection oversight within a respective area. Alongside the Ministry in charge of services and consumer protection, relevant actors are also the Ministry in charge of tourism, Ministry in charge of health affairs, Ministries in charge of agriculture, forestry, and water Management, Ministry in charge of energy affairs, Ministry in charge of transport, Ministry in charge of telecommunication affairs, Ministry in charge of planning and civil engineering and environment protection, as well as the Ministry in charge of finance.

An inspector while conducting oversight examines whether the trader, according to respective provision of CPL:

1. makes the prices visible;
2. notifies the consumer prior to contract conclusion;
3. trades unfairly;
4. sells, serves, and gives tobacco products i.e. alcoholic beverages and beer to a minor;
5. engages in indirect advertisement;
6. sends shipments which the consumer did not order;
7. engages in advertisement through distance communication;
8. misuses the term "guarantee ";
9. replies to consumer complaints;
10. excludes the consumer from the distributive network;
11. establishes a contact line in relation with the connection on the distributive network, quality and use of services of general economic interest;
12. advertises or offers the sale of tourist travels;
13. notifies the consumer on the data regarding the host family and responsible individual to whom the pupil or student can turn for assistance in the place of residence;
14. delivers the warranty in the case of insolvency;

European Union and other forms of international assistance; examining and proposing methods and forms of consumer education; developing studies, analysis, information and other material within the area of consumer protection; proposing and implementing measures with the goal of raising the general level of knowledge on the necessity of consumer rights protection; implementing activities regarding the education of consumers, traders as well as other stakeholders with a shared interest in the implementation of consumer protection policy; expert work related to the projects which implement education and systematic consumer informing as well as other work within this area. See Republic of Serbia Ministry of External and Internal Trade and Telecommunications - Department for Consumer Protection. (Republika Srbija Ministarstvo spoljne i unutrašnje trgovine i telekomunikacija - Odeljenje za zaštitu potrošača). Available at: http://razvoj.mtt.gov.rs/sektori/sektor-za-trgovinu-cene-i-zastitu-potrosaca/odeljenje-za-zastitu-potrosaca/
15. advertises and offers time-sharing, permanent vacation benefits, assistance with resale of time-shared use of property and permanent vacation benefits, in other words the exchange of time-sharing use of property

16. facilitates a special signing of contract provisions on consumer right to unilateral contract termination, on the duration of that rights and the injunction of upfront payment for the period of the duration of the right to termination.

If the inspector in charge determines the deficiencies, he brings a decision which defines the period in which the trader of service provider is obliged to remove that defect. In case the seller or the service provider within the period determined by the inspector's decision does not remove the defect, the inspector brings a decision on an interim injunction on the sale of goods, or service provision up until the date when the defect, due to which the measure devised in the first instance, is removed.

It is important to note that traditionally in Serbia, consumer protection is regarded through a constitutional prism, more specifically through the actions of the inspections in charge (above all the market inspection). Consequently, the impressions shared by the interviewed consumer organization representatives on the significantly decreased engagement of the inspection on the questions of consumer protection. From the interviews, it can be concluded that from the point when the CPL came into force in 2011, the common inspector practice to, referring to the alleged lack of legal options for action, almost in entirety transfer the liability of the implementation of the law onto the civil sector. Given certain estimates, the extent of the work of the market inspection following the coming into force of the new CPL, was decreased for at least a quarter. According to the data noted in the answer to the European Commission's Questionnaire, during 2009, 49% - 61% of the total number of consumer complaints to the Market Inspection referred to reclamations, which was from 2011 nearly completely transferred to consumer organizations.

**Other Relevant Bodies**

Considering the horizontal character of consumer protection policy, governing this area should be approached in a holistic and coordinated manner, which entails an inter-sectorial coordination. Alongside the Ministry in charge, as well as other ministries, directly or indirectly connected to consumer protection affairs, represent a part of the institutional framework. This group encompasses the ministries, which, besides the aforementioned, are in charge in the areas of health, environment, spatial planning, employment and social policy, telecommunications, economy, regional development, information society, mining and energy. Additionally, other state institutions and agencies represent a part of the institutional framework, such as the National Bank of Serbia, more specifically the Centre for Protection and Education of Financial Services Users, Commission for Protection of Competition, Energy Agency, Republic Agency for Telecommunication etc.

Furthermore, the authorities on other levels of vertical organization, meaning local self-government and autonomous provinces, have a great significance given the fact that the majority of the problems consumers encounter are of a local nature. The lower levels, therefore endorse consumer organizations within their jurisdiction, above all financially and logistically with the goal of providing adequate protection services through the development of consumer organizations on the local level.
Court Protection

The courts represent a specific instance of protection in the sense of having the possibility to bring proceedings before courts with the goal of protecting the rights and interests of consumers.

The consumer, whose right or interest is infringed, can submit a request for proceedings prohibiting unfair contracts terms in consumer contracts, proceedings prohibiting unfair business practices or proceedings confiscating illegally acquired profits. If collective consumer interests were infringed, the lawsuit can be brought in front of the Court by a registered association or consumer protection organization.

If the Court determines that certain contract terms on sales are unfair or determines unfair business practices, it can:

- declare any unfair contract term null and void and determine the respective business practice unfair;
- to instruct the trader to cease contracting unfair terms without further due, as well as to cease unfair business practices;
- to establish the obligation of a trader correct the part of the ad which was deemed as unfair commercial practices at his own expense;
- to instruct the trader to at his own expense announce in the media that through a Court order, he was imposed a injunction on unfair contract terms in consumer contracts or unfair business practices.

Until the verdict, following the proposal of the plaintiff for setting in motion the court proceedings, the Court can bring interim measures suspending the application of unfair contract terms in a consumer contract or a cessation of unfair business practices.

It should be noted that the CPL also obliges the Ministry in charge to publish every available case law in relation to these terms on its internet page (Article 141). Data on available Court practices, the Ministry in charge acquires from the Ministry of Justice. Up to this date, on the page of the Ministry in charge of consumer protection there is no data on case law.

Alternative Dispute Resolution

As mentioned in the previous chapter, the consumers have the option to settle their disputes with traders and their associations through alternative dispute resolution, more precisely through mediation or arbitration. However, in Serbia currently, there are no specific bodies, which deal with alternative dispute resolution in terms of consumer disputes.

The Government established the Centre for Mediation as a public institution with the goal of alternative dispute resolution. However, as already mentioned in CPL, in order to resolve a dispute in such a manner, consent from both parties is necessary, while such a type of assistance requires an adequate financial compensation. The final result of mediation is a out-of-court settlement, which has the effect of a contract. If the other party does not enforce it voluntarily, a court proceeding may ensue.
The arbitration procedure is quite similar to court proceedings, while the decisions brought by the arbitration court have the power of a legally binding court verdict, i.e. there is no right of appeal.

Both arbitration and mediation are confidential and urgent. The party, which breaches this rule, bears the liability for the damage inflicted to the other party.

Alternative dispute resolution in Serbia is, however, still in its inception. It is necessary to work on the development and further affirmation of this form of resolving consumer disputes. It is a long-term process in terms of the development of necessary institutions and capacities, as well as educating and raising consumers’ awareness on this form of dispute resolution.

**Consumer Protection Organizations and Associations**

Organizations and associations, under the Law, refer to those who are founded with the goal of consumer protection. They are independent and as the Law prescribes, have the duty to be guided solely by consumer interests. Thus, public officials, leading individuals in the commercial sphere, political parties, and organizations cannot hold leadership positions in associations and organizations. The activities of organizations encompass informing, educating and counseling, further implementing examinations and comparative analysis and cooperating with other organizations in the country and abroad. The authorized organizations/associations also may represent consumer interests in advisory bodies, court proceedings and alternative dispute resolutions and other state bodies. As aforementioned, organizations/associations may submit a request for initiating a proceeding in front of the Court with the goal of prohibiting unfair contract terms, unfair business trading or confiscating illegally acquired profits, in case collective consumer interests were injured.

Organizations are obliged to submit annual reports concerning all costs and sources of income to the Ministry in charge. They may be financed from the budget of the Republic of Serbia, the autonomous provinces, and local self-governments, while they are prohibited to receive irretrievable funds from traders and their organizations.

The Law prescribes that the Ministry in charge will keep a record of the organizations listed in registry, which represent and promote collective consumer interests, poses adequate knowledge and capacities and number at least 50 members. Organizations/associations submit an application of enrollment to the records, with the data that testify on the aforementioned conditions. The Law foresees for the records of organizations to be available for the public on the internet page of the Ministry in charge.
Capacities and Activities of Organizations and Associations

As noted in the previous section, organizations and associations are acknowledged as actors who act in consumer interest if they meet the formal requirements defined by the Consumer Protection Law. Based on the answer to the European Commission's Questionnaire, in Serbia there are five associations for consumer protection and 62 registered organizations. The Law envisions the registration of organizations and associations in an adequate record of the Ministry, which was established in 2011 (following the submission of the answer to the EC's Questionnaire). The Minister in charge of consumer protection affairs, determines more closely the conditions for the registration in the records, as well as the content and manner of keeping the record. Currently, there are 24 organizations enlisted in the registry, and even associations are for the moment enlisting as organizations since they cannot meet the requirement of 50 members as foreseen by the Law. The main goal of these associations and organizations is noted to be raising consumer awareness and strengthening their position on the market. Despite the fact that some of them, mostly associations, act on the national level, often their total influence is still limited and above all directed towards local environments.

Answers to the electronic questionnaire sent to associations and organizations, as part of the research for this study, serve as testimony on their undeveloped capacities. Thus, answers to questions on their functionality, activities, and results represent a challenge. Exceptions in this case surely are the more experienced organizations, which have been present for a longer period, as well as the largest associations, which gather smaller organizations. Associations appear in these cases as the centers of activities.

Additionally, the implementation of this research method was limited due to a certain level of skepticism and distrust between consumer organizations. The distrust may be expressed in terms of the purpose and goals of the research as well as in terms of possibilities for their contribution to result in a tangible improvement of their organization's position. On this basis, the assumption is that the expectations of consumer organizations within the past period we not met on various occasions, which in return influences the disposition and the perception of the need to participate in projects as this one.

The questionnaire was divided into four conceptual parts. Alongside the introductory part, which dealt with general information, the remaining three focused on the functioning of the organizations - activities, capacities/needs and application of the CPL in force. The analysis of the collected data pointed towards certain trends on the basis of such a division of the questionnaire.

Most of the activities of the surveyed organizations develop on the local level. Given that most of surveyed organizations are local organizations (nine organizations and two associations - more specifically, both associations based in Novi Sad), activities of a local outreach are deemed justified. Such activities encompass those regarding the resolution or assistance in the resolution of specific consumer problems in relation to traders and service providers. On the other side, underdeveloped capacities of the organizations represent an obstacle for the progress of a wider specter of activities, which would encompass wider reaching actions on the field of consumer protection. Despite the fact that the results of the survey showed a high percentage of involvement of surveyed organizations in research activities (80%), public advocacy (55%), and policy making processes (90%), a more in
depth analysis of these activities reveals that they can be deemed insufficient and underdeveloped. Participation in policy making processes usually takes place through associations which, since they posses the greatest influence, act in the name of the consumers/organizations in these processes. Thus, in this sense participation has a limited impact.

The majority of the surveyed organizations is willing to put forward remarks, comments and suggestions to the existing solutions, however it is complex to assess the range of the impact of such actions. Research activities is directed towards the analysis and monitoring of the quality of goods, services, prices and consumer opinion, while the range of these activities is significantly narrower when it comes to issues of consumer policy in general and the position of organizations and/or consumers. Organizations through public advocacy attempt to make an impact and address relevant issues, however more successful and wide-reaching activities in this field require also to resolve essential requisites and strengthen capacities and enhance visibility.

When it comes to supporting these organizations in their work, the Ministry in charge, local self-governments, and the bodies of territorial autonomy have up to this point contributed the most through financial and advisory assistance and training. Further, according to the survey, the third most involved in the provision of assistance were private and international foundations. The degree of the assistance is not necessarily correlated with satisfaction - the average rating of the cooperation with all the actors is within a range from 2 (unsatisfactory) to 3 (satisfactory). Thus, despite the fact that the majority of funds come from public funds, the feeling is that the effect of these investments is insufficient and that there is room for improvement in that segment, especially when it comes to assistance in capacitating the organizations for work. For capacity building, according to the questionnaire, financial means are deemed indispensable, following the need for human resources, premises, and work equipment.

The interviewees when asked on the application and consequences of the legislation in power, almost unanimously answered that from the onset of the application of CPL in January 2011, the extent of activities increased significantly in regards to boosted communication with the consumers, the number of their applications and requests for a certain type of assistance. Not a single answer was noted on a decreased number of activities from the beginning of the application of the Law. However, the impact of the application of the Law in regards to the level of consumer protection was rated as lacking improvement in comparison with the previous period. At the same time, the organizations opine that the Law influenced: 1) enhanced informing consumers on their rights and protection options and 2) raising the level of awareness on consumer problems and the necessity to tackle those problems.
One of the chief problems in the opinion of consumer organizations is an increase in the number of cases and obligations inherited as a consequence of the application of the current CPL while unable to effectively deal with those problems due to insufficient capacities. Thus, according to the opinion of the surveyed organizations, in the light of the current legislation which extends their obligations, it is necessary to strengthen organizations in terms of staff and material means, in order to be able to adequately respond to request placed before them, and to make appropriate amendments to the legal acts so as to have a clear division of roles and jurisdiction. Namely, the increase of obligations put before the organizations whilst simultaneously debilitating the role previously given to inspections, results in the inability of organizations to achieve protection on all levels due to the lack of resources, capacities and authorities. At the same time, inspections remained in terms of staff and materially nearly unaffected, while in relation to affairs of consumer interests and rights, their role was reduced.

Penal Policy in the Area of Consumer Protection

The Law foresees also monetary penalties for a certain number of misdemeanors ranging from 300,000 RSD to 2,000,000 RSD for legal entities, from 50,000,00 RSD to 500,000,00 RSD for entrepreneurs, as well as protective measures temporarily prohibiting the performance of certain activities or certain affairs for legal persons, accountable person to the legal person and entrepreneurs.

The current CPL under Article 151 denotes violations, which refer to displaying prices, not issuing invoices, withholding information on the commercial purpose of providing the consumer with notifications, false claims of the trader that he acts in accordance with a certain code of behavior, displaying trust labels, quality labels or equivalent without a necessary permit, false claims that the state or other body approved the code of behavior (and similar claims related to unfair business practices), other breaches of Article 23 of the CPL on misleading business practices, breaches of Article 25 of the CPL on aggressive business practices, breaches of the CPL provisions on the injunction of sale, provision and giving alcoholic beverages or tobacco to minors, direct advertisement, unordered shipments, distance advertisement.

When it comes to provisions on non-conformity and complaints, misdemeanor charges are prescribed only for the failure to reply in written form within the period of 15 days from the arrival of the complaint as well as failure to notify the consumer on the possible solution.

Other prescribed misdemeanors are for certain provisions on tourist travels, package deals, time-sharing. Additionally, associations and organizations may be penalized if they receive irretrievable funds from traders or trader associations with the exceptions of provision of services for a fee such as training and alike.
III.3 Other Relevant Legal Acts

A holistic overview of the body of consumer law should encompass also the provisions of numerous other legal acts, which to a greater or lesser extent tackle this area: Law on Obligations, Law on Trade, Law on General Product Safety, Law on Advertisement, Law on Electronic Commerce, Law on Protection of Financial Services Users, Energy Law, Telecommunications Law, Law on Postal Services, Law on Public Utilities, laws which regulate passenger transport by road, rail and air traffic, Law on Tourism, etc.

Additionally, certain law, which in respect to CPL have a "horizontal" character, i.e. CPL foresees their appropriate application in certain cases, are also relevant. Among other examples, these are: Law on Misdemeanors, Law on General Administrative Procedure, Law on Civil Procedure, etc.

As noted in the introductory chapter, this research is limited to the general law that regulates consumer protection. In that sense, examining the correlation and the impact of other sources of consumer law in Serbia may be the focus other further research.
IV. Policy-making and Legislative Processes in Serbia:

*Problems and Consequences*
In the chapter on the institutional and legal framework, the problems of the content of the Consumer Protection Law (2010) were noted, however without getting into a deeper analysis of causes which led to such legal solutions. In this respective chapter, more attention is dedicated to the problems in relation to the process of drafting and enacting this law, which are to a great extent the consequence of the general absence of a policy-making system in Serbia. Given the possibility of extending the conclusions of this analysis to other sections, this chapter at the onset briefly notes the main characteristics of policy-making systems in Western countries, and further tackles the analysis of the basic problems of this process (including the legislative process) in Serbia. The problems in relation to the drafting and enactment of the Consumer Protection Law are covered in the last section of this chapter. On the whole, this chapter represents a part of the description of the problems enshrined in the current consumer protection system in Serbia and gives a basis for making conclusions and formulating recommendations regarding the process of amending (or bringing a new) CPL. Finally, there is great potential for the conclusions to be applied to other policy areas.

IV.1 Policy-making\textsuperscript{88} in the Countries of Western Europe

The vision of the development of a country which a respective Government places before the public on the very beginning of it mandate as a set of priorities, should be instilled in the foundation of public policy. It is necessary to determine the indicators within the agenda of the Government in order to trace on their basis the implementation of the agreed priorities. On the basis of this, the Government carries out its policy through a public policy cycle.\textsuperscript{89}

The public policy cycle encompasses the beginning of the policy decision (habitually in the form of general policy goals), following a detailed policy elaboration, which offers a number of options for more specific political decisions and in relation to the public policy instrument, which needs to be brought (e.g. law).

Public policy in each particular area needs to be determined on the basis of the choice of the best of the proposed policy options (in the sense of efficiency and efficacy, the effects on the industry, environment, etc.). Policy options in every department need to be offered to the Ministers and the Government, on the basis of through analysis and case studies and possible solutions (evidence-based policy making). In successful systems, policy briefs of such analysis as well as the arguments for the most appropriate option are justified within the policy papers, which are drafted by public servants, trained in such matters, often in cooperation with research instituted, think-tanks, etc. The purpose of such a constellation is to through the results of thorough analysis and studies create a particular "marketplace of ideas," for which the public administration usually does not have time or the resources.

Drafting a chosen policy instrument needs to begin only after the policy options have been discussed and the Government reached a consensus on the best possible option. Following

\textsuperscript{88} Serbian language (as well as majority languages of the continental Europe) does not account for different wordings of politics/ policy in the sense of party politics (in English: politics) and policy in the sense of development direction for certain field or many fields governed by the state (in English: policy). However, Serbian administrative practice has neglected this difference not only at terminological level but also at substantive level. For the purpose of delineating those two notions, in this document we use the word „public” in the parenthesis before the word „policy” when using second meaning (policy).

the enactment of the chosen instrument, its implementation takes place. After, it is being rated which leads to a further development of the given policy (and maybe changes, supplementing the instrument) or even a reconsideration and modification of the initial political decision. The enactment of the chosen instrument, its implementation takes place. After, it is being rated which leads to a further development of the given policy (and maybe changes, supplementing the instrument) or even a reconsideration and modification of the initial political decision. 

Coordination in between different departments has a chief role in the policy process, since there is almost no policy area which is not intertwined and does not influence a larger number of other areas. In most of the Western countries, consultations between the ministries begin rather early in the policy making process, so as to consolidate the legitimate interests of various departments prior to the drafting phase, when a certain policy option is practically already chosen and only the elements of the chosen option can be influenced.

Finally, the evaluation procedure has a relevant role in the policy-making process, not only ex-ante (i.e. previous) evaluations, but also ex-post evaluations which facilitate the assessment of the success of the policy that was carried through, and the changes which in the subsequent cycle will essentially improve the achieved results.

**IV.2 Problems of Policy-making and Legislative Processes in Serbia**

In the Western Balkans countries, including Serbia, the stage of policy development is habitually not separated from the stage of drafting the legal act, which is a consequence of a lack of understanding as well as a lack of knowledge and capacities within the ministries when it comes to the preparation of policy proposals. Therefore, the law oftentimes is not the reflection of actual problems, and specifically not the reflection of the best (most efficient, and most effective) approach to the resolution of a particular problem, given that there is no deliberation, comparison and analysis of policy options. Moreover, frequently the drafting of a legislative act is not preceded by any serious analysis and research, which would assist the decision makers in turning towards a certain approach to resolving the problem, which they have encountered. Conversely, solutions are sought during the process, meaning after the drafting of a legislative act has commenced. In this sense, policy in Serbia is oftentimes created after a "gut feeling" of the political leadership within the ministries (above all, the Ministers), whilst drafting of a law or other legislative act is usually approached immediately and this solution is being developed further in an ad hoc manner.

Additionally, the ministries in Serbia traditionally perform the work within their competence through a minimal coordination with other departments whose competences are inter-related and inter-connected or influence one another to a certain degree. Capacities for public policy coordination are rated as weak, which is partially the consequence of the centralization of decision making powers in the hands of politicians (without delegating to public officials) and the coalition character of the governments in Serbia, which increases the inter-departmental "ignoring" (lottizzazione). Rules on consultations in between departments do exist, however only for consultations in written form (procedure of gathering opinions on drafts of legislative acts), which entails a very late stage of drafting legislative acts. Given that there is preparation of the policy proposal (policy papers, discussion papers, Green papers), it is redundant to speak of inter-departmental consultations in that stage. Although in many cases

---

92 " SIGMA Assessment Serbia." Organization for Economic Cooperation and Development (OECD).
working groups are formed for the purpose of drafting a legislation, which often includes representatives of a number of ministries, consultations and consolidation in terms of the primary approach to the resolution of a certain problem/issue which is tackled by a public policy and law are inhibited as even these working groups begin their work on a previously prepared draft (working version) of the law.

Even if acknowledging that strategies represent documents in which the foundations of certain public policies are denoted, still there cannot be any talk of a coherent system. Namely, often laws themselves (as instruments for the realization of a certain policy) foresee a strategy for that area. Cases in point are the Law on Regional Development (2010), as well as the Consumer Protection Law, itself. In that sense, the relation between strategy and law in the Serbian system, given that the law should be a detailed account of the chosen policy option in a certain area or in relation to a problem.

Moreover, in Serbia, according to certain analyses, merely on the central level there are currently a couple of dozen various valid strategies, which are not mutually harmonized, and are often contradictory. Consequently, on the level of the Government, an utter lack of strategy is evident. If the goals of the strategies coming from divergent sectors are mutually inconsistent, or even pitted against one another, one cannot speak of a unique policy of the Government.

The inclusion of external actors (stakeholders, civil society, etc.) into the policy-making process has not still been done in great detail, since there no law regulating lobbying while regulations on public debates remain general and poorly implemented. The findings of the research on the implementation of public debates reveal that in most of the cases of drafting a law, the authorities do not organize such debates despite the criteria prescribed by Law, which note it as necessary.

Furthermore, since as a rule policy proposals are not being drafted, one cannot speak of the cooperation between public administration and the respective section of the civil society, on the implementation of a research, which would substantiate the policy proposals and ensure that the laws solve actual problems in the most efficient manner. In the past two years, certain progress in the cooperation of the state with civil society was noted, following the establishment of the Office for Cooperation with the Civil Society, which is working towards raising awareness on the importance of consulting the civil society, within the ministries.

One of the recently published studies focusing on the legislative proves (not the broader policy-making process) in Serbia, under the chief problems of the legislative process in Serbia enlists the following:

1. Not publishing a legislative plan, which is not to a significant extent the reflection of the Government's strategic priorities and actual possibilities for adopting laws;

2. Deficits in relation to the membership, methods of functioning, financing and the accountability of working groups;

---

94 For instance, while in the European Union for every period there is an umbrella strategic document (Lisbon agenda, Europe 2020), which denotes the development priorities of certain politiks in the long-term period, in Serbia there is no such unique document.
3. Incomplete coordination and cooperation of the relevant participants in the legislative process;

4. Using the emergency procedure without any reasonable justifications.\textsuperscript{96}

The results of this study also point to numerous other problems regarding the participation of stakeholders and the public in the legislative process, inadequate approach and structure of the analysis on the effects of legislative acts, lack of a system for ex-post analysis of the effects of legislative acts, underdeveloped inter-institutional mechanisms and rules of cooperation and coordination between the bodies of public administration, etc.\textsuperscript{97} Most of these conclusions on the problems of the legislative process can be extended to the entire system of policy-making in Serbia.

Since policies are not brought on the foundations of analysis and research, options for solving/tackling a certain problem are not being discussed, adequate inter-departmental consultations are not being carried out, neither are the stakeholders consulted in an adequate manner, the Ministers often run their departments without a determined constant policy course and without a determined strategic direction (and thus, without the adequate indicators for measuring the success of a certain policy/strategy/plan) i.e. . In such a manner, instead of keeping state policy in a certain area in a previously chosen and stipulated direction (which only in times of crisis may be abandoned only temporarily, to the extent deemed necessary, and return to it soon after), Ministers "extinguish fires" and change the policy depending on the problem. The consequence of such policy-making is high regulative risk, legal uncertainty, damage to the economy, investments, and finally the standard of living for the citizens. In such a situation neither domestic nor foreign investors can base their investment decisions on a unique previously announced direction of policy, which can be legitimately expected to be carried out on the basis of analysis and the choice of the most appropriate options.\textsuperscript{98}

Such a state of affairs will have a negative reverberation on the Serbia's accession negotiations (as well as on her membership once she becomes a Member State). Namely, in order for a country to successfully negotiate the terms of its accession to the EU, and soundly identify the chapters of negotiations in which to solicit hardly achievable and certainly few transitional periods for the full implementation of the \textit{acquis communautaire}, Serbia has to "speak unanimously." In other words, the interests of over 30 negotiating chapters have to be very well harmonized, and on the basis of such a harmonization a unique overarching state interest has to be crystalized, in order to be further emphasized by all direct and indirect participants in the negotiations. Even as an EU Member State, Serbia will attain certain benefits from EU membership only if it is competent of successfully formulating its interests and coordinating all sectorial participants in numerous working groups, committees and other meetings on various levels within the Council of the European Union. The state, which defines, coordinates and represents its policy well, is far more likely to within the complex governing system on multiple levels within the EU be an effective net beneficiary of the EU budget and to build a part of its interest into every decision brought by


\textsuperscript{97} Ibid.

\textsuperscript{98} In democratic states, as in the EU system itself, the protection of legitimate expectations represents one of the basic principles withing public administration, which is confirmed through case law.
EU institutions. Finally, the protection of legitimate expectations and the consistence/predictability of the administrative decisions represent very important principles of the European public law, which if breached may lead to the application of penal provisions against Serbia on the basis of European Court of Justice verdicts.

Nowadays, Serbia needs to achieve an essential progress in the EU integration process, which means more than merely opening membership negotiations - it means successful negotiation and representation of consistent stands, which commands trust from the countering party in the negotiations. In order to achieve this, Serbia has to develop a coherent policy system and to train its public officials as well as its civil servants to perform their roles within that system - from the analysis and preparation of policy proposals, essential inter-departmental coordination and reaching consensus, a sensible and informed decision making, to a consistent representation of the adopted stands within the country and beyond it.

**IV.3 The Process of Drafting the Consumer Protection Law and its Consequences**

Bearing in mind the strong legislative activity of the EU in the area which was covered in the second chapter, the Consumer Protection Law (CPL) represents one of the legal acts which to a great extent boil down to exercises of EU law transposition into domestic legislation. The harmonization with the *acquis communautaire*, however, does not exhaust the latitude for policy option deliberation, as the EU directives, which are to be transposed into domestic legislation, leave a broad room for choosing the most appropriate institutional framework for reaching the goals imposed by those directives.

Consumer Protection Law, however, was produced and enacted through a non-systematic process and in that sense it cannot be deemed as a good example of the problems of the policy-making and legislative processes in Serbia.

The working group, formed by the Minister of Trade and Services, comprised of numerous employees of the Ministry, but mostly economists. A university professor of civic law was also included in the working group. The representatives of other ministries were not included in a adequate extent and only seldom. The Working group's work was supported by the consumer protection project financed from EU funds (Strengthening Consumer Protection in Serbia Project, hereinafter ZAP project), whose team incorporated several prominent experts (professors) of EU law, and several Serbian legal experts. However, as these two teams did not work together and have not held joint meeting, the experts of the ZAP project were compelled to independently bring forth their own proposals and submit them to the Ministry, which dealt with these according with discretion, and "without a sole specific policy, plan or agenda." According to the statement of one of the key experts, the Ministry's reviews of the ZAP project's proposals, as well as the decisions to change the legal acts drafted by the experts of the project, "were not founded in any specific program or expertise [...] it was an arbitrary intrusion into a methodically prepared text, which is particularly problematic as it

---


101 Karanikić-Mirić, Marija. pp. 5.
inhibited any sensible discussion on the reasons for altering or simply rejecting certain proposals of the ZAP team.\textsuperscript{102}

The process of producing parts of the Law, which refer to implementation and requirements in relation to establishing of new bodies and reforming existing ones, is rated as particularly poor. ZAP project proposals for the procedural section of the law were being reduced to the bare minimum without further elaboration and discussion.\textsuperscript{103} ZAP project experts opine that the issue of improving the position of consumers in the implementation of the law was of no concern to law makers and that it was a better approach to rights, when they were guaranteed by general rules of contractual law and improved the position of the consumer rather than the rules of the new material consumer law which are "beautiful," but difficult to implement.\textsuperscript{104}

The other participants of the aforementioned Law drafting process suggest that the options and possibilities of the application of material provisions harmonized with EU law were not even discussed particularly in terms of the implementing provisions of the Law. Inconsistency and the lack of a systematic approach to the section of the Law which refers to the implementation, is above all the consequence of the fact that after a two year systematic work on material provisions, what followed was a rash finalization of the implementing section of the law in order for the Proposal of the Law to be adopted in the Public Assembly prior to the publishing of the Annual Report of the European Commission on Serbia’s progress in the process of European integration (October 2010).\textsuperscript{105} The ZAP project experts concur, and state that the adoption of CPL, as well as its content is the result of a continuous political pressure from the part of the EU. In this case, one could claim that the EU integration process turned against the quality in the process and the content of the law.

Moreover, due to political pressure for the Law to be adopted prior to the publishing of the Annual Report, a public discussion was not held on the final draft of the text after the introduction of the procedural provisions, which have arguably required the higher level of public consultations (particularly the civic society as a actor in the implementation whose role has been significantly altered) having in mind that the material-legal aspect of the Law to a great extent was not limited by EU law requirements. Even the prescribed inter-departmental consultations of opinion gathering were merely pro forma, given that even the Republic/State Secretariat for Legislation did not have a sole essential remark to the Draft.\textsuperscript{106}

Thus, in the following amendments of the Consumer Protection Law, it is necessary to apply the right participatory approach. This would signify that at the onset, prior to the work on the draft law, a broad range of consultations of the public and civic sector should take place. These consultations would take into account the results of the researches in relation to the implementation of the law, which were conducted up to that point, and to facilitate the consensus of the stakeholders in regards to the most appropriate approach to the implementation of consumer policy, which would represent a starting basis for this draft.

\textsuperscript{102} Ibid.
\textsuperscript{103} Ibid., pp. 7.
\textsuperscript{104} Ibid., pp. 8.
\textsuperscript{105} Excerpt for an interview with an undisclosed participant of process of drafting the CPL.
\textsuperscript{106} Ibid.
V. Towards an Improvement of Consumer Protection Policy in Serbia:

Policy Options Analysis
As already mentioned in the previous part of the Study, the ultimate goal of this analysis is to offer proposals for sustainable improvement of consumer protection policy system in Serbia, knowing that substantive alignment of the CPL with the EU law was achieved to a large extent, and further alignment will be performed in accordance with novelties in consumer *acquis* and with support from IPA consumer protection project.

Thus, this is part of the Study will present policy options for potential consideration in the process of amending the implementation part of the CPL. Having in mind the characteristics of the Serbian legal system and the level of development of relevant institutions and institutes in Serbia, each option is followed by a suitable argumentation on its advantages and disadvantages. The basis for the identification of specifically these policy options are the examples of institutional models of various EU Member States, which were discussed in greater detail in the second chapter.

**V.1. Zero option – Status Quo**

First option under consideration is the "status quo" option i.e. the option that does not entail any changes of institutional framework of consumer protection in Serbia, but rather merely activities on development of the existing mechanisms.

One of the advantages of this option is surely the fact that it does not entail any changes of the CPL, which in principle ensures legal certainty. As it can be assumed that consumer policy actors in Serbia are already familiar to the provisions of the existing CPL, given mechanisms for policy implementation should further only be strengthened. Additionally, this is the least costly solution, one that is possible to preserve, having in mind inertness of the political actors in Serbia to approach policy reforms in an analytical and far-reaching manner.

However, preserving the existing implementation provisions of the CPL would entails that the effectiveness of the consumer policy would greatly depend on results of the judiciary reform in Serbia, which has been among the least favorably evaluated reform areas according to the European Commission's Annual Progress Report for 2012.107

Choosing zero option would also entail gradual work on the strengthening and affirmation of alternative mechanisms for dispute resolution, which not easily achievable. At the same time, more significant and more systematic investment in the development of non-governmental organizations is necessary, above all associations and organizations for consumer protection, both in terms of their material and human capacities, and in terms of their affirmation as the right place for the submission of consumers’ complaints. Support for regional consumer centers, whose basic structure has only recently been built, would be especially important in order to guarantee a leveled degree of protection on the entire territory of Serbia. In addition, it would be favorable if the consumer organizations would try to develop on their own (independently, with the assistance of the state or international donors) alternative mechanisms for dispute resolution.

It should be noted that the choice of the *status quo* option would question the justification behind the employment of 480 market inspectors who were responsible for application of many provisions of the former Consumer Protection Law prior to date when CPL (2010) entered into force. According to certain approximations, the volume of work of the market inspectors decreased for at least a quarter after the entry into force of the new CPL,\(^\text{108}\) while the number of market inspectors remained unchanged. Additionally, it is estimated that budget of the Republic of Serbia annually spends from 4 up to 5.5 million euro on the 480 salaries of the market inspectors.\(^\text{109}\) Thus, it is reasonable to raise the question of the justification for hiring such a great number of market inspectors in the current consumer policy system.

While further work on the improvement of the judiciary, alternative mechanisms for dispute resolution and non-governmental organizations represents an indisputably correct and even necessary development direction, not only for consumer policy but also for many other sectorial policies in Serbia, question which arises is whether consumers in Serbia should wait for a sufficient progress in those mechanisms in order to protect their legally (and even constitutionally!) guaranteed rights.

---

\(^{108}\) According to the data noted in the answer to the European’s Commission Questionnaire, during 2009 and 2010 between 49% and 64% of all consumer complaints filed to the Market Inspectorate referred to reclamations, which has been from 2011 on fully shifted towards consumer organisations.

\(^{109}\) Moderate scenario is based on the assumption that the average market inspector works on the position of a counsellor (the lowest legal position for an inspector), which corresponds to IX salary group, whereby a third salary grade is taken as an average (coefficient 2.79) of a total of eight salary grades within every salary group. Since the baseline for calculating the salaries for civil servants and employees in public administration at the time when the Study was produced (October-November 2012) was 18444 RSD, a gross salary calculation reaches 83878 RSD (excluding calculation of previous work at 0.4% for each year of employment). Annually, for 480 market inspectors, salaries amount approximately 483.1 million RSD i.e. approximately 4.3 million Euros. For the calculation a more extreme scenario, with the average position of an advisor with a third salary grade, without computation of past work, amounts to approximately 604 million RSD i.e. 5.3 million Euros.
V.2. Consumer Protection Law (2010), version 2.0

The option that can be regarded as the novel version of the existing law does not significantly alter the institutional setting for consumer policy implementation, but above all adjusts the relations of the institutions mechanisms, encompassed by the current system, in a way that corresponds to the actual maturity and development level of the institutions in Serbia. However, it certainly entails amendments and supplements to the existing Law, which may be more or less extensive, depending on the alternative of this policy option that will be chosen. It is crucial to mention that this option entail a more systematic approach to the institutional organization of consumer policy.

Main features of the „2.0”options are:

- systematic introduction of new misdemeanor offences for majority of substantive-legal provisions of the CPL;

Systematic approach to the introduction of new misdemeanor offences requires thorough work first of all, on the deliberation of the necessity for the introduction of offences for individual provisions and secondly, on detailed examinations and consultations (interdepartmental within the public administration as well as external with the civil society) in order to reach a detailed definition of individual offences.

- greater reliance on inspectorial oversight, above all through market inspection, as a consequence of the previous point, while continuously working on the improvement of the inspection's capacities and work, without raising the total number of inspectors;

The introduction of new offences in return brings forth the need for greater reliance on inspectorial oversight. In the case of consumer policy, market inspection should naturally have the most important role. However, the roles of other inspections should not be neglected. Inspectorial oversight is a traditional and relatively developed mechanism for the enforcement of penalty provisions of laws in the area of commerce.

Certainly, an important precondition for reaching the full effect of this policy option would be additional improvement of efficiency and effectiveness of the market inspectorate, through supplementary training, stronger disciplinary liability and a stricter approach to the evaluation of work results (in compliance with the Law on Civil Servants). It should be noted that in this case, the increased role of the market inspectorate should not result in and increase of the number of market inspectors, having in mind the current over staffing for existing volume of work, as it has already been explained while considering zero policy option.

- greater role of misdemeanor courts judges than it is the case in the current setting;

The production of new Law on Misdemeanor Offences is underway. The current draft contains, among others, a new institute of misdemeanor warrant that could be issued on the spot, prescribing fees lower than those foreseen by the Law, enabling significant simplification of the procedure and leading to savings. The application of this institute should be examined in terms of misdemeanor offences in the area of consumer protection.

In its Analysis on the Implementation of Recommendations and Measures of the Serbian State Audit Institution in June 2012, CEP recommended a further discussion on the
specialization of judges of misdemeanor courts having in mind the lack of sustainability of the current system in which a single judge has to have knowledge of a wide range of regulations from the most divergent areas. "Through a certain level of specialization of judges of misdemeanor courts in several broader defined fields of expertise, their work could be significantly improved and facilitated, without jeopardizing the right to a natural judge," the conclusions of this Analysis devise.  

the improvement of the hierarchical position and capacity of the unit in charge of consumer policy within the Ministry of Trade

The key issue to be addressed in relation to the hierarchical position of this unit relates to its functional division from the divisions of sectors dealing with issues of trade and relations with large retail chains, and alike. Possible solutions would be the establishment of a separate sector, or separating the unit from without the organization of the sector. A solution, proposed by the IPA project for consumer protection, is the separation of the particular Directorate for consumer protection, which would in return get an additional functional independence in the structure of the Ministry. According to the Law on State Administration, a Directorate is established for executive and other related inspection and professional affairs, meaning that the inspection oversight in the area of consumer protection could become part of the organization of that authority.

The main advantage of this policy option is the combination of its efficacy, effectiveness and efficiency. Firstly, the necessary changes and additions to the Law, along with the necessary activities of an expert working group and consultations, interdepartmental as well as external, could be delivered in relatively short period of time (up to six months). The application of new provisions could start immediately after the adoption of the law, since it does not envisage the establishment of new institutions or hiring new staff. Instead, the existing market inspectors would be better employed and the taxpayers’ money reserved for their salaries would be justified. Additionally, it would certainly be necessary to continue and to intensify efforts in the improvement of other institutions relevant for the implementation of any of the possible consumer policy options, but also other numerous policy areas - judiciary and consumer organizations.

A major advantage of this option is its effectiveness: the level of consumer protection in Serbia would essentially increase in a relatively short period of time, through an immediate improvement by reintroducing inspection and misdemeanor courts at the core of protection, as already functional mechanisms. At the same time, this policy option would not shut the door for any additional affirmation of the mechanisms that the current system predominantly relies upon, while allowing for an incremental strengthening (which as previously noted, requires a longer period of time). As a result, this option significantly broadens possible consumer protection options and facilitates an additional increase of the general level of protection.


Even though this issue was not identified in the initial analysis as one of the chief causes of the problems in the implementation of consumer policy, the discussion within the Conference that presented the draft of the study, pointed towards certain significant problems in relation to the position and the structure of this unit. Thus, this issue has been introduced into the content of the final recommendation of this option.
It is very important for Serbia to follow European trends of protection mechanisms, which also includes the innovative mechanisms that the EU is currently working on - e.g. the development of a far-reaching, unique online system for alternative dispute resolution. Thus, reliance on the traditionally better developed forms as additional methods of consumer protection, combined with the an incremental development of new mechanisms employed in the better organized countries of Western Europe, would certainly yield results both in the short-term and long-term. Additionally, it should be noted that this option, would not endanger legal certainty, since it would not lead to tectonic changes in the legal regime, but only certain adjustments.

A major risk in relation with the application of this policy option is the possibility that its implementation cease after legislative amendments, without substantive improvements in work and efficacy of the market inspection and a certain specialization of judges in misdemeanor courts. In that case, although it would probably increase the level of consumer protection to some extent in comparison to current circumstances, insufficient expertise and the inertness of the market inspection would somewhat diminish the positive effects of this legal-institutional solution. Furthermore, judges of misdemeanor courts, having insufficiently specialized knowledge, could presumably result in bad court decision with far-reaching negative consequences.

Therefore, it is necessary to stress once again the necessity of a holistic approach in the realization of this option if it's chosen, i.e. an active approach towards improvement of all the consumer protection mechanisms covered, with minimal costs.

Two sub alternatives of this option, i.e. two paths for achieving realization:

1. "Quick and narrow" alternative – in the short-term approaches only the changes of the institutional provisions of the CPL, without focusing on additional alignment with the EU law, so as to as soon as possible, achieve the first effect of improving the level of consumer protection. The changes to the CPL would be necessary in the near future in order to ensure a full substantive-legal harmonization of the CPL with the EU consumer law, in an adequate moment during the process of European integration.

2. "Slow and wide" alternative – total revision of the CPL would be performed in close cooperation and with the support from the IPA project for consumer protection, which has to give detailed guidelines and proposals for a full alignment of Serbian consumer policy with its counterpart in the EU. The problem arises as the final results of the IPA project will be available within a year up to a year and a half (specifically having in mind the current intensive legislative activity in the EU concerning the area of consumer protection), meaning that the preparation of institutional changes would have to “wait” for preparations, consultations and alignment in relation to legal provisions. The IPA project should also ensure the alignment of the Serbian CPL with provisions of the new EU acts, which are to be adopted next year.

The analysis of the IPA project will partly cover other relevant legal acts relevant for consumer policy (Law on General Product Safety, Law on Trade, Law on Advertising, Law on Protection of users of Financial Services, Law on Obligations...), which on the
one side, additionally slows down the process, but on the other side, ensures thoroughness and comprehensiveness in the approach of revising CPL.

V.3. New concept 1 – Commission for the Protection of Competition and Consumer Protection

There are also completely novel institutional solutions worth mentioning and examining, having in mind the positive results that they have brought in certain EU countries. First such solution would be the introduction of the body in charge for competition protection into consumer policy. It was accepted in Italy, Great Britain, Finland, Denmark, Poland (and was announced in the case of Ireland as well), and it showed excellent results in practice. In Italy, it was at the onset applied only for provisions on unfair commercial practices, only to be expanded to other areas of consumer law (unfair contact terms) through the legal amendments from January 1st 2012.

It would basically mean the introduction of new powers to the Commission for Protection of Competition in Serbia, whereby a number of market inspectors would move to the Commission as controllers. In a large number of cases, the Commission would have a de facto judicial role (especially in relation to unfair contract terms and unfair commercial practices), and its power to impose fees and other measures at its disposal in the area of competition protection would be spread to consumer policy.

To some extent this option can be combined with the previous one, however, the institutional balance would be completely different, since the market inspection would entirely lose its role in consumer policy. A certain number of former market inspectors would be dealing with consumer protection as controllers in Commission, while the rest would be in charge of other areas of work of the market inspection (protection of intellectual property rights, product safety, general regulations on trade, price regulation, advertising etc.) within the Ministry of Trade.

The advantage of this option is a better coordination and connection of the competition and consumer policy, which have a great deal of overlapping and common grounds. Also, certain benefits would arise from the fact that consumer protection, as a less developed policy area, would become a part of jurisdiction of an institution that is already fairly strengthened, bearing in mind the importance and priority given to competition policy in the EU accession process. In this way, the Commission’s employees, thoroughly trained in the areas of the internal market and relevant EU legislation, would be also “used” for consumer protection. It may be assumed that as the result of intense education and specialization in the aforementioned areas, their level of competence and capabilities to make adequate decisions in consumer protection issues is significantly higher than that of judges who did not go through such training and education. Finally, a possible advantage of this option is also a rationalization of operating costs, if the proposed transfer of inspectors to the Commission for Protection of Competition were to be accepted.

Above all the disadvantage of this new concept is an additional cost in comparison to the 2.0 option. This cost is primarily in relation to the need to train the staff of the Commission for a new area of competence. Namely, even if a number of inspectors transfer to the Commission, alongside their additional training (which is inherently part of the 2.0 option),
additional costs would occur in terms of introducing new capacities into the Commission. To a certain extent, this alternative would be a shock for the system, since it would come to the implementation of an entirely new concept and the need for affirming of novel institution that was previously unknown in consumer policy. Educating the consumers themselves for applying new system would certainly take longer and would be far more expensive than the choice of any of the two previous options. Moreover, it is not certain whether or not such a model would be functional in Serbia, having in mind the lack of any previous experience. Finally, a disadvantage would also be the very long period of time necessary for a detailed elaboration and preparation of the implementation, which would leave consumers in Serbia without adequate protection in the short-term. Other arguments against this option which are noted also during the roundtable when the draft of the study was presented, refer to the danger of neglecting consumer policy as "weaker" or "less important" within the extended Commission, and the issue whether it is wise to put the burden of another area of competence on a relatively young institution, which is still dealing with serious challenges in its work within its existing competence.

If choosing this policy option, it would be needed to in a thorough fashion find the best solutions for any additional questions. For example, the question, which arises, is who would be in charge of leading misdemeanor proceedings for consumer law breaches, which are not related to unfair contract terms and unfair commercial practices. Also, since there would be far less reason for the Minister in charge of commerce to chair the National Council for Consumer Protection, it should be decided upon who should take this post, etc.

V.4. New concept 2 – Separate Body for Consumer Protection

Finally, it is worth examining the option of establishing an entirely new body in exclusively charge of consumer protection. This option can have many sub alternatives depending on the type of institution, which would be chosen. There are various institutional models that are being applied in the EU Member States. In Scandinavian countries (Denmark, Sweden, and Finland) consumer ombudsman is a typical institution with decennia of tradition. Powers of such institution are extensive and practical results are very positive. Certain EU countries established specific commissions or agencies, similar to the bodies in charge of competition protection, which are in charge only for consumer protection (e.g. Ireland, where the merger of consumer bodies with those in charge of competition policy is underway, as it seems to be the tendency).

The main advantage of this option lies in the fact that a separate institution that is established only for the purposes of consumer protection would focus only on these issues, which would potentially lead to a significant affirmation of consumer policy in Serbia. As positive examples in Serbian practice, independent bodies should be noted (not only Ombudsman, but also Commissioner for Information of Public importance and Personal Data Protection, and State Audit Institution) as they gained an important position important position in the Serbian legal system and positioned themselves as resilient watchdogs of government’s actions in a relatively short period of their existence.

However, there are numerous arguments against this policy option. If deliberating upon the option of creating an institution of an ombudsman type, one should begin with the question of the reasoning behind the relocation of this type of institution from the public administration
system. This derives from the need for protecting the citizens from state actions, i.e. the need to protect their rights that are most often breached by state institutions themselves. Since within consumer policy, protection is necessary primarily in respect to private enterprises, with the exception of services of services of general economic interest, the rationale of ombudsman type of institution remains questionable. Moreover, efforts to reproduce these institutions in neighboring countries yielded rather poor results (Bosnia and Herzegovina, as well as Albania, where system was abandoned after several years of implementation efforts). Finally, this solution would be the most costly alternative with the most unexpected results, while at the same time being a great potential shock for the system and principle of legal certainty and consistency.
VI. Conclusions and Recommendations:

Towards a European Level of Consumer Protection in Serbia
VI.1 Conclusions and Recommendations Pertaining to the Harmonization with EU Law and the Enforcement of Harmonized Acts

Serbia has committed to harmonize gradually all of its existing and forthcoming legislation with the EU acquis as well as to effectively implement these harmonized legal acts, by signing the Stabilization and Association Agreement with the EU (especially in terms of Articles 72 and 78). It is also obliged to harmonize the standards of consumer protection with those valid in the Union. Existing Consumer Protection Law (CPL) has been to a great extent harmonized with the respective part of the acquis. Future efforts, especially with support from IPA consumer protection project, should focus on achieving full alignment of not only the CPL but also all relevant consumer acts, and also to follow further developments of the EU consumer law.

Still, today, the issue of full alignment with the EU law is not a burning one in comparison with the issue of ensuring functional mechanisms for implementation of harmonized provisions. Otherwise, well-harmonized legislation remains just empty words on paper. EU directives, as the main instruments for legal harmonization in this area, leave great latitude for national legislations to develop efficient mechanisms for implementation. Article 78 of the SAA explicitly requires the development of administrative structures for market surveillance, while EU law in certain cases requires also ex officio monitoring on the part of state institutions in charge. In that sense, it is necessary to increase the number of misdemeanor offences foreseen by the Law and strengthen the role of the inspections, above all market inspection.

Recommendations:

1. **Consumer Protection Law and other consumer related legal acts to be further changed with international experts’ support, so as to fully respond to the obligations stemming from the Stabilization and Association Agreement.**

2. **A greater number of misdemeanor offences for violations of the Consumer Protection Law to be introduced, as well as to strengthen the inspection surveillance in this area.**

Having in mind the current organization of misdemeanor courts and lack of specialization, the judges of those courts are facing a great challenge, as their every day work requires detailed knowledge and use of large number of legal acts from the most diverging areas. With a certain level of specialization in several broadly defined expert areas, their work could be significantly improved and facilitated, while at the same time not questioning the right on natural judge.
Recommendation:

3. Judges of misdemeanor courts to be specialized in several broadly defined expert areas.

VI.2 Conclusions and Recommendations Pertaining to the Legal and Institutional Framework for the Implementation of Consumer Legislation

Having in mind the institutional solutions in the EU Member States and neighboring countries, as well as the current challenges and level of development of the Serbian legal system, a number of possible options for institutional setting of consumer protection in Serbia was defined in chapter V of this study. Bearing in mind the denoted advantages and disadvantages of different policy options, as well as the need to essentially increase the level of consumer protection in Serbia within the short-term, while maintaining gradual improvements in the mid-term, recommendation are as follows:

Recommendation:

4. Existing institutional model to be modified "in two steps" in order to maximize the results as soon as possible. The first step would be based on the “2.0” option, while all stage and conditions need to be taken into account. The third option of relocating the focal point of consumer protection towards the Commission for Protection of Competition could be applied in the mid-term (2-3 years), while the preparations for this step should begin even earlier.

VI.3 Conclusions and Recommendations Pertaining to Further Development of Consumer Protection Policy

The CPL prescribes the production of a Consumer Protection Strategy for a five years period. Modeled according to the European Consumer Strategy for 2020, it should also incorporate efforts in relation to the digital agenda (to ensure that digitalization essentially increases benefits for consumers and not otherwise) and sustainable development (to improve sustainable consuming), social inclusion (to take into consideration specific circumstances of the vulnerable consumers, as well as the aging population), and in relation to the so-called “smart legislation” (market monitoring, in order to ensure targeted and informed adoption of legislation).

Recommendation:

5. Consumer Protection Strategy for the period 2013-2018, among other, to contain following priorities:
Increasing consumer trust in the state, including the development of a comparable consumer protection level across Serbia

Strengthening the consumer’s position on the market through consumer education, active support to consumer organizations and their inclusion in the policy-making process

Ensuring that consumer issues are taken into account in all other relevant policies

Ensuring a comprehensive approach to the issue of vulnerable consumers, as starting point for National Programme for Protection of Vulnerable Consumers

Improving data collection and processing in relation to consumer policy, in order to ensure a better foundation for the development of forthcoming regulations and other initiatives

The National Council for Consumer Protection was conceived as a solid mechanism for ensuring interdepartmental coordination as well as consultations with stakeholders outside the public administration. It is important to always have in mind the distinctly multi-sector character of consumer policy and the need to address consumer related issues in numerous other sectorial policies.

Recommendation:

6. Additional effort to be put in the affirmation of the National Council for Consumer Protection, in order to ensure regular Council meetings and the appreciation of its decisions/recommendations in future policy-making and consumer policy implementation, as it has only been recently established. The Council could be the appropriate place for discussing proposed options, which were previously identified through an extensive public debate between public and civil sector.

Article 85 of the CPL foresees that the government adopts a National Programme for Protection of Vulnerable Consumers, which up to this date was not made public present even as a draft. Additionally, the CPL defines the concept of the vulnerable consumer from the perspective of accessing services of general economic interests, which in returns narrows down this category of consumers. To the narrowing of the term also contributed the translation of the term “vulnerable” (in Serbian “ugroženi” which would be translated into English as “endangered”) instead of the more appropriate term “ranjiv” (corresponding to the term “vulnerable”) that has already been in routine use widely speaking in the area of social inclusion. Through the use of this term, additional categories of consumers could be incorporated.

Recommendations:

7. Immediately begin preparations and compose the starting points for the production of a National Programme for Protection of Vulnerable Consumers.
8. Trigger further discussions and re-examine the category of the vulnerable consumer category in a way that would more firmly incorporate principles of non-discrimination and equal opportunity (equal access) in the consumer policy in Serbia as a country that is striving to become a part of the EU Single Market.

V.4 Conclusions and Recommendations Pertaining to Civil Society Organisations

CPL envisages keeping a registry on associations and organizations, which according to Article 129 need to have developed adequate capacities so as to be recognized in the overall system of consumer protection as relevant actor. In that context, the same Article envisions a minimum of 50 members from associations/organizations, as the minimum criterion to be enlisted in the registry of the Ministry in charge. Having in mind that according to the Articles 130 and 131, only associations and organizations enlisted in this registry have the power to represent consumer interests before relevant institutions and bodies, and taking into account the fact that the activities of the enlisted associations and organizations can be funded by the state budget, it remains unclear why consumer organizations have to prove their capacities in relation to large membership (50), instead of just three members as it necessary for other organizations which can apply state funding. Similarly, the required number of members for establishing associations (50 organizations) is unreasonably high having in mind that in Serbia there already are several active well-respected and well-established consumer associations with more than a dozen members.

Recommendations:

9. Examine the repeal of the legal provision on the minimum number of members for necessary being enlisted in the registry, as well as deliberating upon other ways of determining level of development of an organization’s capacity and credibility.

10. Encourage a broad public debate in the National Council on ways for strengthening consumer organizations, as one of the most important actors in consumer policy, whose capacities insufficiently developed.

V.5 Conclusions and Recommendations Pertaining to the Policy-Making Process and Drafting the Law

The policy-making process in Serbia is not systematic and suffers from serious deficiencies, from a intertwining the policy-making stage with the legal drafting stage (as instruments of policy implementation), a lack of analytical and research work and the examination of potential policy options, to an undeveloped and formalized interdepartmental coordination and insufficient consultations with the public, above all with the civil society.

Consumer Protection Law (2010) is a reflection of the poor policy-making system in Serbia. Numerous problems in application of the CPL are a consequence of the absence of analysis and discussion on potential and appropriate mechanisms for the implementation of the new
consumer policy. Process of drafting the CPL was problematic for many reasons and public debate did not encompass the elements, which are the most important for the public - those that regulate the system of policy enforcement.

Therefore, it is necessary to apply an essentially different approach in future changes and supplements of the CPL (or in drafting new Law), in line with the following recommendation:

**Recommendation:**

11. *The process of drafting the new law or amending and supplementing the existing to include stakeholders from the early stages, ensure continuous interdepartmental consultations, examine the advantages and disadvantages of the proposed/potential policy options (especially in relation to the implementation of consumer policy) and include a sufficiently long and broad public debate on the consolidated draft.*
Bibliography

Books:


Articles:


**Documents:**


**Legal Acts:**


Case C-168/05 Mostaza Claro [2006] ECR I-10421

Case C-168/08 Hadady [2009] ECR I-6871 C-122/10
Case C-304/08 Zentrale zur Bekämpfung unlauteren Wettbewerbs eV v Plus Warenhandelsgesellschaft mbH [2010] ECR I-0000

Case C-453/10 Jana Pereničová and Vladislav Perenič v SOS financ spol. s r. o. [2012] ECR I-0000

Case C-473/00, Cofidis v. Fredout [2002] ECR I-10875

Case C-481/99 Heiniger [2001] ECR I-9945


Case C-75/63, Hoekstra [1964] E.C.R. 177

Case C-168/05 Mostaza Claro [2006] ECR I- 10421


Rewe Zentrale v Bundesmonopolverwaltung fur Branntwein, Case 120/78, [1979] ECR 649


Consumer Protection Law, „Official Gazette SFRJ,” no. 37/02.


Internet Pages:


"About the Swedish Consumer Agency." Swedish Consumer Authority. Available at: http://www.konsumentverket.se/otherlanguages/English/About-the-Swedish-Consumer-Agency/


European Bureau of Consumer Unions. (Bureau Européen des Unions des Consommateurs). Available at: http://www.beuc.org/Content/Default.asp?

Serbian Consumer Centre. (Centar potrošača Srbije). Available at: http://www.ceps.rs.


Netherlands Consumer. Available at: http://www.consumerauthority.nl/about/organisation.

International Association of Consumer Law. Available at: http://www.iaclaw.org/index.html


Association for the Protection of Consumers in Vojvodina. (Udruženje za zaštitu potrošača Vojvodine). Available at: http://potrosac.info.
Annex 1:

**European Organizations for Consumer Protection**

BEUC\(^{112}\) - European Consumer Organization

BEUC is comprised of 42 independent national consumer organizations from 31 countries, and serves as an umbrella organization in the representation of their interest and consumer protection across Europe. National organizations, which form BEUC, are Member States of the European Union or candidate countries. In the description of the organization, BEUC states that the members of this consortium are in the position to influence the decision making processes in Europe, to become a part of the network of independent national consumer organizations, and to exchange experiences and contacts with the goal of strengthening their national profiles.

BEUC membership is divided into two categories. The first category encompasses full-fledged members who participate in the promotion of consumer interests, the management of the organization as well as in the definition of strategies and policies and have voting rights in the bodies of the organization.

Affiliate members benefit from the organization's expertise, work on the promotion and consumer protection, but do not participate in the management and do not have voting rights. The organization's priority areas are consumer contracts, digital rights, energy, financial services, foodstuff, consumer notifications, health and safety and sustainability.

BEUC is dedicated to the strengthening of consumer movement in the countries of Central, Eastern and Southeastern Europe. The situation in those countries is on an unsatisfactory level when it comes to the financing of consumer organizations and consumer representation. In accordance with such circumstances, BEUC conducted an analysis of the state of affairs and determined certain activities with the goal of strengthening the influence of these organizations. The state of affairs in these countries in terms of consumer protection, as seen by BEUC, will be discussed further in the text.

**ANEC - European Consumer Voice in Standardization\(^{113}\)**

ANEC represents consumer interests in the implementation of technical standards especially in the context of applying European legal acts and policies, and participates on a voluntary

---

\(^{112}\) Bureau Européen des Unions des Consommateurs. Available at: http://www.beuc.org/Content/Default.asp?

basis in the work of several organizations for the development of standards. ANEC is an international, non-profit association based in Brussels and recognized by the European Commission, EFTA Secretariat (which also funds the association) and is a member of the European Consumer Consultative Group (ECCG).

ANEC acts through permanent working works engaged in priority fields. ANEC's priority areas comprise: children safety, design, household appliances, environment, information society, nanotechnology, services and trade..

**European Consumers Centre Network**

Established through a merger of two consumer protection networks in 2005, the European Consumer Centres Network (ECC-Net) represents a EU consumer protection platform. As such, this network is not an association of civil society organization, but is a service co-funded by the European Commission and the national governments, while the Commission coordinated the work of the entire Network. The Network has local branches in all the Member States, as well as in Norway and Iceland.

The Network works on goals which concern informing consumers on their rights and obligations in the activities that they perform as consumers, replies to their information requests, provides support in processes of filing lawsuits or in consumer disputed. European Consumer Centres cooperate in these processes.

**Consumers International (CI)**

CI is a non-profit, global federation of consumer protection organizations, founded in 1960, with over 220 members from more than a 100 countries. The mission of the organization is the promotion of consumer rights on an international level so as to protect them and empower the consumers. Eight consumer rights serve as a guide in CI's work.

The work of CI comprises:

- **global activities** divided on regions;
- activities related to **financial services**, which comprise from education within financial services to projects aiming at guiding global companies;

---

115 The Network for the extra-judicial settlement of consumer disputes (EEJ-Net) and the Network of Euрогuichets.
117 Osam osnovnih potrošačkih prava: pravo na zadovoljenje osnovnih potreba, pravo na bežednost, pravo na informisanost, pravo izbora, pravo da se čuje glas potrošača, pravo na obeštečenje, pravo na obrazovnje i pravo na zdravu životnu sredinu.
 activities related to **climate changes** and in that context CI focuses on climate negotiations and informing consumers;

- **social liability**, a requirement of government institutions and corporations so as to ensure a social and environmental standards;

- **sustainable development**, since the approach to sustainable products and services is a condition of a sustainable future;

- **energy**, in the context of developing one of the basic consumer rights, which is the satisfaction of basic needs;

- **foodstuff**, the focus is on food safety, advertising of children food, and salt reduction. CI represents consumers in this area through an official status within the World Health Organization and Codex Alimentarius;

- **communications**, special attention is dedicated to modern communication networks (Internet) and their accessibility, affordability, reliability and safety;

- **consumer protection and legal acts**, as a common characteristic which is present in all CI's activities and is fundamental for the development of consumer rights worldwide. CI participated in the process of advocating for the adoption of UN Guidelines for Consumer Protection;

- **strengthening consumer organizations**, which is also the central goal of CI;

- activities marking the World's Consumer Rights Day, as a means to spread awareness on consumer rights.

With the goal of strengthening consumer organizations, CI developed a series of activities strengthening the position of consumers in transitional countries, primarily through awareness raising campaigns and strengthening the very capacities of organizations themselves.

**International Association of Consumer Law (IACL)**

The Association deals with the development of research networks and the promotion of research, and joints actions in the sphere of consumer rights and consumer polities. In that goal, it works on connecting government institutions, universities, consumer organizations and experts. Membership is open for all individuals who at universities or similar institutions teach or deal with research in the areas of interest of the Association, but also for research centers, institutes, national organizations, associations etc.

The reasoning behind the establishment of the Association was provided by conferences on consumer law, so as to formally establish it in Belgium in 1997. In the implementation of its

---

118 International Association of Consumer Law. Available at: http://www.iaclaw.org/index.html
goals of encouraging scientific research, legal education in the issues of consumer law and policy, and information exchange and research findings on an international level, the Association, produces research texts and other publications, and organized conference on specific topics.

Due to inability to fulfill the conditions for a national registration, the Association acts as a non-registered international organization, which is managed through local organizations.

**Trans Atlantic Consumer Dialogue (TACD)**

TACD is a forum of consumer organizations from the US and the EU, which jointly develop recommendations aimed at the administrations of the US and the EU so as to represent consumer interests in policy-making. The forum idea was born within two initiatives, the New Trans Atlantic Agenda and the New Economic Partnership, with the consent of the two aforementioned administrations on the need for an increased role of the civil society in Trans-Atlantic policy-making. It was launched in 1998, and gathers more than 70 consumer representatives from the US and EU.

The goal is to make formal mechanisms available to consumer representatives so as to be able to influence political negotiations and treaties, and strengthen the position of consumers on an international level. Within its activities TACD issues statements and recommendations in the areas of intellectual property, information society, food, financial services, nanotechnologies, product safety, trade, sustainability and climate changes. Every year TACD submits edited recommendations, which are the result of working group efforts, to the leaders in the US and EU. The practice is for the European Commission to reply to these recommendations in a written form.

**Consumer Organizations in Serbia**

In Serbia several dozens of consume protection organizations are active, as well as a number of associations of consumer protection organizations.

**NOPS - National Organization of Serbian Consumers**

NOPS was founded by eleven local Serbian consumer organizations in 2004 with the idea of organizing an association of organizations, which will be an adequate representative, counterpart to the European and international organizations. NOPS is a non-profit organization formed to protect the interests and rights of consumers' groups in Serbia, while

---

membership in NOPS is voluntary through member organizations operating in towns and cities. The principles of NOPS' consumer protection policy are the principle of public access, education and information, the principle of unity and the principle of prevention. NOPS currently has over 20 consumer organizations on the territory of Serbia. NOPS is based in Novi Sad.

According to the organization's strategic plan, NOPS exercised its activity in the sphere of improving legislation, identifying problems and analyzing and presenting customer needs to the public and the authorities, education, counseling, advocacy and information and representing consumers' interests, cooperation with citizens and non-governmental organizations whose activities contribute to consumer protection and state institutions working towards a more efficient consumer protection etc. NOPS headquarters provides support to consumer organizations in the field of expertise, management, publishing, logistics, education and so on. Consumer protection is accomplished through networks:

- **Regional Consumer Centers** - Subotica, Zrenjanin, Novi Sad, Belgrade, Sabac, Kragujevac, Smederevo, Zajecar, Uzice, Krusevac, Nis and Leskovac;

- **District Consumer Centers** - Subotica, Sombor, Kikinda, Zrenjanin, Pancevo, Novi Sad, Sremska Mitrovica, Belgrade, Sabac, Valjevo, Kragujevac, Jagodina, Smederevo, Pozarevac, Zajecar, Pine, Cacak, Uzice, Krusevac, Kraljevo, Nis, Prokuplje, Pirot, Leskovac and Vranje;

- **Consumer Bureaus at the local level** - currently established in Vlasotince, Blace, Ra, Doljevac, Novi Beograd and Vracar.

NOPS also established branches (trustees) as organizational units without a status of a legal entity within the communities in which they are not established and registered as consumer organization.

The Federal NOPS Consumer Centre (an association of regional consumer centers) established several institutions for the needs of consumers who enter the Infoteka Service, the Education Center, the independent consumer laboratory Testing Center "Security" Arbitration bureau for out-of-court arbitration, Legal counseling for court consumer representation, Media Center, Consumer newspaper/magazine, Publishing Consumer Center, Information Center for information on prices, Patient Rights, Center Eco-patrol, Consumer Wagon and the National Foundation for Consumer Protection.

NOPS provides expert support, which may be achieved through expert commissions and committees, publishing activities (brochures, newsletters, etc.), meetings, discussion forums
and media appearances. Expert committees and commissions of NOPS act in the fields of legal services, financial services, public services, tourism services, health care, healthy environment, energy efficiency and protection of energy, telephony, housing, household appliances, audio, video and IT equipment, standardization and quality, food, education, media and publishing, protection of minors, protection of elderly, protection of the disabled, marketing projects and international cooperation.

**APOS - Consumer Association of Serbia**

APOS was established in 2003 in Novi Sad, with the goal of informing and consulting consumers as well as representing them. Since 2008 APOS is an associate member of CI (Consumers International). APOS sees its mission in independent advocacy and promotion of consumer rights and market control in accordance with European standards, which includes work on the harmonization of national legislation with the good practices and regulations of the European Union. APOS is working towards building institutional and administrative capacity with the goal of effective consumers protection at all levels, as well as improving the efficiency of consumer efforts through education for working on consumer protection in practice. The APOS is comprised of five consumer protection organizations from Serbia.

As part of its activities APOS, among others, it testes certain product categories to ensure that consumers get valid information on their use and safety, advises consumers on specific types of services, work on strengthening the capacity of members through seminars, leads a regular publishing activity through the magazine Consumer Reporter, brochures etc..

**CEPS - Centre for Consumers in Serbia**

CEPS was founded in Belgrade in 2008 through an initiative of three consumer organizations. CEPS is an association of voluntarily associated consumer protection organizations which operate on the territory of Serbia, and advocate assistance to consumers in achieving the protection of their rights, as well as promote harmonization of national legislation with EU democratic standards. CEPS emphasizes the transparency of its work through timely and truthful notification means of the media.

CEPS vision is to bring together as many organizations as possible for a joint action in the promotion of consumer rights and interests, which would in return improve their position. As the ultimate aim of implementing CEPS' vision, what is emphasized are poverty eradication, social justice, respect for human rights and human dignity, the construction of a social market

---

121 [Asocijacija potrošača Srbije](http://www.apos.org.rs/cms).
122 [Centar potrošača Srbije](http://www.ceps.rs).
environmentally sustainable economy, as well as the representation of the rational use of economic resources. CEPS' headquarters are in Belgrade, and membership encompasses eleven local consumer protection organizations from Serbia.

CEPS is committed to improving the application of legal acts relating to consumer protection in Serbia, to inform its members on their rights and obligations as well as on fluctuations on the market, keep records of complaints and actions taken, act in the public for the protection of consumers, organize panel discussions, lectures and conferences, call for CEPS' participation in the hearings of the Board in charge of consumer protection, the disclosure of traders who have somehow damaged consumers, continuous cooperation with local governments, expert organizations within the country and abroad and undertakes publishing activities through journals and professional publications.

***

In Serbia there are also other associations of consumer protection organizations such as the Association of Serbian Consumer Organizations - SOPS, National Association of Consumers of Serbia - NSPS, the Republican Union of Consumer etc.

**Centre for Consumer Protection FORUM**

Center for Consumer Protection Forum was founded in 2002 in Nis. Forum's activities were inspired by basic consumer rights established by the 1985 with the resolution of the General Assembly of the United Nations: the right to availability of basic necessities (such as the availability of basic goods and services), the right to safety (protection from products and services that are harmful to consumers), the right to information (availability of information for adequate choice and protection against unfair advertising), the right to choose (between multiple products at affordable prices and with guaranteed quality), the right to hear the voice of consumers (consumer representation in the decision of consumer policy), the right to compensation (just compensation for the harm or deception endured), the right to education (knowledge and skills necessary for the adequate choice and awareness of basic rights and obligations) and the right to a healthy environment (an environment free from threats to health).

The founders of FORUM are professors, teaching assistants and associates from the faculty of the University of Nis. Forum's mission is to protect individual and collective interests of consumers. In order to protect the rights of individual consumers Forum established Regional counseling for consumers in Serbia. The common interests of consumers are determined through press conferences, round tables and public debates, radio and television appearances, etc. As part of its educating and informing mission FORUM publishes a
magazine Active consumers and other brochures. Also, the Forum conducts independent quality controls and controls product safety and records a consumer barometer.

**Consumer Organizations of Serbia**  

The consumer organization from Jagodina was founded in 2004 and in 2011, it changed its name to the Consumer Organization of Serbia. This organization worked on its own or in cooperation with state bodies, and other associations of organizations on consumer protection and the application of the Consumer Protection Law.

Within the Organization Regional counseling of consumers from Sumadija, Western, Southern and Eastern Serbia was initiated in Jagodina. It developed a database for the work on solving consumer problems through mediation or counseling. In cases where mediation does not lead to the resolution of the problem, consumers are made aware of their rights and sent to lodge complaints at inspections or lawsuits by regular courts.

**Centre for Consumer Education and Protection, Belgrade**

The Centre is a non-profit and non-partisan body established in 2007 with the main goal of providing assistance to the citizens of Belgrade in the protection of their consumer rights. Education is emphasized as the primary goal, or in other words, the creation of active consumers who are aware of their rights. In achieving its objectives, the Centre is guided by the consumer protection policy of the European and the universal rights of consumers defined by the UN General Assembly. The center is dealing with counseling and organizing seminars and other activities to raise awareness and strengthen the capacity of consumers and their organizations. The center is a member of CEPS.

**Association for the Protection of Consumers in Vojvodina**

The association is a non-governmental organization established in 2001, and is a member of NOPS. An impetus for the founding of the organization was given by the generally poor state on the market in terms of product quality control, unfair competition, poor quality of products and services, lack of information and awareness on consumer rights, etc., which endangers their rights.

The Association opines that it is necessary to create a separate analytical and documentation center on the flow of goods and services, to raise awareness of the average consumer, to lobby the governmental and the legislative bodies and organize independent laboratories testing products.

---

123 Organizacija potrošača Srbije. Available at: http://www.japotrosac.org.rs.
124 Centar za edukaciju i zaštitu potrošača Beograd. Available at: http://www.bgpotrosac.org.rs.
125 Udruženje za zaštitu potrošača Vojvodine. Available at: http://potrosac.info.
The Association is dealing with the examination of the quality of products on the market, provides advice and informs about the quality and about purchasing certain categories of products, while consumers have the possibility of disclosing their opinions and giving their impressions about the products and services they purchase and use. Association records a so-called Consumer white and black list for denoting traders and manufacturers who act rightly or wrongly, respectively.

**City Consumer Organization Leskovac**[^1]

Formed in 1970 in Leskovac, with the aim of helping consumers and services users. It deals with the protection and representation of consumer interests at the regional level and collaborates with institutions in the south of Serbia dealing with consumer protection. It is a founder and member of the Serbian Association of Consumers (SOPS).

The main tasks of the organization encompass raising public awareness through information and education, the implementing legislation and participating in the creation and implementation of consumer policy. These tasks are accomplished through various services such as *Infoteka*, Arbitration board for consumer representation away from courts, Counseling consumer center for consumer representation in court, Consumer education center, Consumer media center for information purposes, Consumer testing center for purposes of examining the quality of goods and services, Consumer publishing center for the needs of publishing, Consumer research and development center for research and statistics and so on.

**Centre for Education and Consumer Protection, Ruma**[^2]

The Center was founded 2011 with the goal of aligning the area of consumer protection with European and international standards, promoting the rights and interests of consumers in public as a way of contributing to strengthening the position of consumers.

The objectives of the Centre are: implementation and enforcement of regulations on consumer protection in Serbia, informing consumers of their rights and obligations about the fluctuations on the market, the provision of legal aid. Within the Centre, Consumer counseling was established. Member of CEPS.


Despite a high level of harmonization with EU law, Consumer Protection Law (2010) in reality led to a deterioration of the level of consumer protection in Serbia. This study analyzes problems embedded in the institutional mechanisms that brought to this worsening, proposes policy options that need to be deliberated upon during future reforms, and provides a spectrum of recommendations as solutions to current problems.