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# THE CONSUMER PROTECTION ACT

## ZAKON

### O ZAŠTITI POTROŠAČA

#### Part I.

#### GENERAL PROVISIONS

##### *The purpose and content of the Act*

##### Article 1

This Act shall govern the protection of the basic rights of consumers when buying goods and services and in other forms of acquisition of products and services on the market, including:

1. the right to the protection of the economic interests of consumers,
2. the right to the protection from threats to life, health or property,

3. the right to legal protection of consumers,
4. the right to consumer information and education,
5. the right of consumers to organise themselves for the protection of their interests,
6. the right to consumer representation and participation of the consumer representatives in the work of bodies dealing with issues of interest to consumers.

### *Relation to other laws*

#### Article 2

(1) The application of this Act shall not affect the rights consumers may have under other laws.

(2) Unless otherwise provided in this Act, the obligation-law consumer-business relationships shall be subject to the provisions of the Civil Obligations Act.

### *Definitions*

#### Article 3

(1) For the purposes of this Act:

- "*consumer*" shall mean any natural person who concludes the contract or acts on the market for purposes that do not fall within the sphere of his or her business or professional activity;

- "*trader*" shall mean any natural or legal person who concludes the contract or acts on the market within its business or professional activity;

- "*product notification*" shall mean a written notice containing basic information about the product;

- "*products sold in bulk*" shall mean a product which is offered to consumers unpacked and which is measured in the presence of consumers;

- "*pre-packed product*" shall mean a unity of product and packaging for sale to the end consumer without further treatment;

(2) For the purposes of Chapter VI, Part II of this Act, a trader shall also mean a person acting in the name or on behalf of the trader.

(3) For the purposes of Part III of this Act:

- "*product*" shall mean any goods or service including immovable property, rights and obligations;

- "*business-to-consumer commercial practices*" (hereinafter: "*commercial practices*") shall mean any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers,

- "*to significantly distort the economic behaviour of consumers*" shall mean using a commercial practice to appreciably impair the consumer's ability to make an informed decision, thereby causing the consumer to take a transactional decision that he or she would not have taken otherwise,

- "*code of conduct of traders*" shall mean an agreement or set of rules not imposed in the form of law or other regulation which defines the behaviour of traders who undertake to be bound by the code in relation to one or more particular business practices or business sectors;

- "*code owner*" shall mean any entity, including a trader or group of traders, which is responsible for the formulation and revision of a code of conduct and/or for monitoring compliance with the code by those who have undertaken to be bound by it,

- "*professional diligence*" shall mean the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, and which is in line with honest market practice and the general principle of good faith in the trader's field of activity;

- "*invitation to purchase*" shall mean any form of commercial communication which indicates the basic characteristics of the product and the price in a way appropriate to the means of the commercial communication used and thereby enables the consumer to make a purchase,

- "*undue influence*" shall mean exploiting a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which substantially limits the consumer's ability to make a decision based on full information (an informed decision);

- "*regulated profession*" shall mean a professional activity or a group of professional activities, for access to which or for the pursuit of which, or one of the modes of pursuing which, the law or other regulation, directly or indirectly, requires possession of specific professional qualifications.

- "*alternative dispute resolution*" shall mean resolving consumer-trader disputes arisen due to a breach of good business practices, which consumers can bring before the Conciliation Centre of the Croatian Chamber of the Economy, the Conciliation Centre of the Croatian Chamber of Crafts and Trades or the Conciliation Centre of the Croatian Employers' Association, as well as before the Court of Honour of the Croatian Chamber of the Economy and the Court of Honour of the Croatian Chamber of Crafts and Trades, for the protection of their rights under the law and other regulations.

- (4) For the purpose of Part VII of this Act:

- "*worker*" shall mean a natural person who performs certain activities for the employer with whom he/she has an employment contract.

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### *Choice of foreign law*

#### Article 4

By choosing foreign law as the applicable law a consumer with a residence in the Republic of Croatia shall not be deprived of protection he or she is entitled to under this Act or another law regulating the specific aspects of consumer protection.

### *The trader's obligation*

## Article 5

(1) The trader shall fulfil a consumer contract in accordance with the provisions of [this Act](#) and the provisions of the law of obligations.

(2) At the consumer's request and choice, the trader shall replace a nonconforming product with the new correct item or reimburse the consumer for the price paid for it or charge a lower price for it or, subject to the consumer's consent, eliminate nonconformity of the product.

(3) In case of nonconformity of the service rendered to the consumer, the trader shall, at the request of the consumer, refund the amount paid by the consumer, reduce the price charged for the service, or eliminate the nonconformity of the rendered service.

(4) In a situation referred to in paragraphs 2 and 3 of this Article, the consumer may request a return of the paid amount only if he or she previously gave the trader reasonable time to fulfil the contract.

(5) Nonconformity of products or services, where necessary, shall be proven through expert opinion from an authorised institution or by a certified court expert, with the costs of expertise to be covered by the consumer or the trader, depending on the result of expertise.

(6) The trader shall, within the warranty period and within a reasonable time, repair a defective product for the consumer who has submitted a warranty for it, or, if that is not possible, substitute such a product with the same non-defective product.

## *The legal nature of the provisions governing consumer contracts*

### Article 6

Terms of contract contrary to the provisions of this Act shall be deemed null and void.

## Part II

### SALE OF PRODUCTS AND PROVISION OF SERVICES

#### Chapter I

#### GENERAL PROVISIONS ON RETAIL TRADE

#### *Terms and conditions of the sale of goods and services*

### Article 7

(1) If under the general rules of the law of obligations the display of a product at an outlet is not considered an offer, the trader may refuse to conclude with a consumer a contract for the purchase of the product thus displayed only if this is justified by the circumstances of the case or customs. The trader may refuse to provide a service that is the object of its activity only if this is justified by the circumstances of the case or customs.

(2) At the place of sale the trader shall clearly, visibly and legibly indicate its conditions of sale. Special conditions offered by the trader for certain products shall be clearly, visibly and legibly indicated at the places where these products are sold. Special conditions granted by the trader to certain groups of consumers (expectant mothers, newlyweds, disabled persons, pensioners, etc.) shall be clearly, visibly and legibly indicated at the place of sale.

(3) The trader is prohibited from disclosing personal data of a consumer to any third party

without prior explicit and written consent of the consumer, unless required to do so by law or a decision by an authority.

(4) For services of repair or maintenance of a product worth more than HRK 500.00 the trader shall present to the consumer a cost estimate and an itemised work order. The work order shall be co-signed by the trader and the consumer, with one copy of it to be handed to the consumer.

(5) If in situations referred to in paragraph 4 of this Article a need arises during the process of repair for additional works and/or additional parts (variation order), the trader shall seek the consumer's prior consent in writing given personally or by means of distance communication, if the variations involve a price increase by more than ten per cent.

#### Article 8

(1) Every trader shall enable consumers to file written complaints at the place of sale or through mail, facsimile machine or electronic mail and shall respond to them not later than 15 days of the receipt of a complaint.

(2) Every trader shall keep records of consumer complaints referred to in paragraph 1 of this Article for at least one year as of the day of the receipt of the complaint.

#### *Indication of the prices of goods and services*

#### Article 9

(1) The trader shall clearly, visibly and legibly indicate the selling price and the price per unit of measurement of products or services offered, and of spare parts sold with the services, and shall also indicate that prices are quoted in HRK. The price can also be indicated in other currencies along with HRK.

(2) A retail price is considered the final price for a product or service or a certain product quantity, including the value-added tax.

(3) The trader shall enable the consumer to check the retail price mentioned in paragraph 2 of this Article.

(4) A price per unit of measurement is considered the final price per one kilogram, one litre, one metre, one square metre or one cubic metre of a product, or another unit of quantity generally or usually applied in the sale of products in a region of the Republic of Croatia, including the value-added tax.

(5) For products sold in bulk only the price per unit of measurement shall be indicated at the place of sale.

(6) A price per unit of measurement need not be indicated if identical to the retail price of a product.

(7) If other regulations require indication of net weight, for pre-packed products it will suffice to indicate the price per net unit of measurement.

(8) The retail price and the price per unit of measurement of pre-packed products shall be indicated on the product or its packaging or at the place of sale, as well as in the shop-window. No prices other than those mentioned in paragraph 1 of this Article may be indicated on the product or at the place of sale, except in the case of clearance sale, discount sale or business closure.

(9) The trader shall indicate the price in a way which will not damage the product.

(10) The provisions of paragraph 8 of this Article shall not apply to public auctions and the sale of works of art and antiques or the prices of services regulated under other statutes.

### *Indication of prices in advertising*

#### Article 10

While advertising where reference is made to the retail price of products or services and the price per unit of measurement of products, such price shall be identical to the price as provided by the provisions under Article 9 of this Act.

### *Settlement of pecuniary obligations*

#### Article 11

Pecuniary obligations paid through a post office, bank or another payment institution shall be considered settled on the day on which such an institution has received the consumer's payment order.

### *Invoice*

#### Article 12

(1) For a product sold or a service rendered, the trader shall issue an accurate, indelible and clearly, visibly and legibly printed invoice in a paper or electronic form..

(2) The trader shall enable the consumer to check if the amount charged for products sold or services rendered is correct.

(3) The trader shall adhere to the indicated retail price and conditions of sale.

(4) The issuance of the invoice shall not be charged extra.

(5) The provisions of the Value-added Tax Act shall apply to the trader-consumer relations referred to in paragraphs 1, 2, 3 and 4 of this Article.

### *Documents accompanying a product*

#### Article 13

(1) During the sale of a product the trader shall deliver, or in case of products sold in bulk present to the consumer officially required documents the manufacturer has prepared for easier and safer use of the product (warranty, technical instructions, assembly instructions, instructions for use, list of authorised repair shops, warning about possible risks in operation, product conformity statement etc.).

(2) The documents referred to in paragraph 1 of this Article shall be printed clearly, visibly and legibly in the Croatian language and Latin script.

(3) Any translation of required documents the manufacturer has prepared for easier and safer use of a product, referred to in paragraph 1, shall be identical to the original.

### *Packaging*

#### Article 14

(1) Packaging shall be safe for health, suited to the shape and weight of the product, shall not be misleading in respect of the product's weight and size and shall conform with special regulations laying down packaging requirements.

(2) Where wrapping with special wrapping paper and additional decorations is offered, the price of such products and wrapping service shall be indicated clearly, visibly and legibly.

(3) Shopping bags used for carrying bought products which have manufacturer's or trader's logo, trademark, slogan and/or name shall be considered a promotional material. Such packaging shall not be charged by the trader.

(4) At the consumer's request the trader shall retain the packaging of a sold product.

### *Promise of a benefit*

#### Article 15

The trader who while offering a product or service to consumers promises a benefit in the form of a prize or makes other similar statements, suggesting to consumers that they have won the stated prize, or if the promotional activity is over but the concerned product still bears the notice of that activity, the trader shall deliver the product intended for the prize.

### *Door-to-door distribution of promotional materials*

#### Article 16

(1) It shall be prohibited to place advertisements and promotional leaflets in or on mailboxes, at consumers' doorstep or otherwise affix them on consumers' front doors, if such prohibition is clearly written on them.

(2) Responsibility for placing advertisements and promotional leaflets lies with the trader whose goods and services are advertised on advertisements and promotional leaflets.

## Chapter II

### PRODUCT NOTIFICATION

#### Article 17

(1) Product notification implies any written designation, the trademark, brand name, make an image or symbol representing the product and is placed on its packaging, label or tag, on documents and information accompanying or relating to that product.

(2) Product notification shall be obligatory for every product and shall contain at least the following data:

- manufacturer name of the product, name under which the product is sold
- type and model of the product and the indication of the product's unit of measurement if this is an essential feature of the product,
- date of manufacture and expiry date, if that is legally required,
- for domestic products, the name and seat of the manufacturer and the country of origin
- for imported products, the name and seat of the importer, the name of the manufacturer and the country of origin.

(3) In addition to information referred to in paragraph 2 of this Article, product notification shall contain information defined in special regulations.

(4) As an exception, the provision of paragraph 2 of this Article shall not apply to

products for which product notification rules are laid down in the Food Act and related implementing regulations.

(5) The manufacturer name of the product referred to in paragraph 2, subparagraph 1 of this Article, under which the product is sold, is a designation or description of the product and, if appropriate, of its use, which shall be accurate enough to enable consumers to identify the product sought and distinguish it from other similar products which it may be mistaken for.

(6) The seat referred to in paragraph 2, subparagraphs 4 and 5 of this Article shall comprise the town, street and house number.

(7) The country of origin referred to in paragraph 2 subparagraphs 4 and 5 of this Article shall be considered the country where the product was manufactured or the country where the product was last subjected to a process which has substantially changed its characteristics.

#### Article 18

(1) Product notification shall be placed on the product or its packaging and the trader shall be responsible for its existence and completeness.

(2) Any data provided in the product notification referred to in Article 17, paragraph 2 of this Act shall be truthful, clear, visible and legible, and written in the Croatian language and Latin script, which does not exclude other languages and characters easily comprehensible to consumers. The manufacturer shall be responsible for data contained in the product notification, and the importer for imported products.

(3) Product notification shall be easily identifiable, generally understandable, unambiguous, legible, indelible and shall not be covered by any other text or image.

(4) For products sold in bulk, product notification shall be indicated on the packaging in which the product is sold or at the place of sale, if the product is not kept in special packaging.

(5) The product notification shall be indicated in a way which will not damage the product.

### Chapter III

#### PROMOTIONAL SALE, DISCOUNT, CLEARANCE SALE AND SALE OF REJECTS

##### *Promotional sale*

##### Article 19

(1) Promotional sale is the sale of a certain quantity of a product of a manufacturer at a specific time and place, and at a price which is lower than the price of that product in regular sale.

(2) The product referred to in paragraph 1 of this Article shall bear a clear, visible and legible designation containing the words "promotion" or "promotional sale".

##### *Discount and clearance sale*

##### Article 20



(1) The product offered for sale at a discount or in clearance sale shall be furnished with a clear, visible and legible price tag showing the price before and after the discount or clearance sale.

(2) If the percentage of price reduction is indicated on a scale, the highest price reduction percentage at the outset of a discount or clearance sale shall cover at least one fifth of all products put on sale at a discount or clearance sale.

(3) The provisions of Article 9 of this Act shall appropriately apply to the prices of products put on sale at a discount or in clearance sale.

(4) Clearance sale referred to in paragraph 1 of this Article is considered the sale of goods at a reduced price in the event of the trader's business closure, business closure in a building, or the cessation of selling a product from the trader's assortment.

(5) Discount referred to in paragraph 1 of this Article is considered the sale of goods at a reduced price at season's end, sale of defective products, bargain sale within a trade fair, and permanent sale at reduced prices in specialised shops, whatever the reason of price reduction.

#### Article 21

For products put on sale at a discount or in clearance sale because of the expiry of shelf life, the shortest shelf life or the deadline set for its use shall be additionally clearly, visibly and legibly indicated.

#### *Physical separation of products on sale at a discount or clearance sale*

#### Article 22

(1) The trader shall physically separate products offered at a discount or in clearance sale from other products not offered at a discount or in clearance sale, and shall clearly, visibly and legibly indicate that it is a sale at reduced prices or a clearance sale.

#### *Sale of rejects*

#### Article 23

If a trader sells rejects, it shall physically separate such a product from other products and clearly, visibly and legibly indicate on the product or at the place of its sale that it is a reject and inform the consumer what the defect is about.

### Chapter IV

## PUBLIC SERVICES PROVIDED TO CONSUMERS

#### Article 24

(1) Within the meaning of this Act, public services shall mean: electricity distribution and supply, natural gas distribution and supply, thermal energy distribution and supply, fresh water supply, waste water drainage and purification, public passenger transport, postal services, maintenance of cleanness, municipal waste disposal, maintenance of cemeteries and crematories, including transport of the deceased, chimney-sweeping craft, and public telecommunications services.

(2) The provision of public services to consumers shall be charged at prices fixed in

special regulations.

(3) The provision of public services, where the nature of a public service permits it, shall be charged per actual consumption.

(4) The meter reading service shall not be charged, except where the consumer requests an extraordinary reading envisaged under a special regulation.

(5) The trader shall provide the consumer with detailed prior information about the terms of public service contracts and publicise these terms in the media.

(6) Bodies which decide on matters concerning the rights and obligations of the consumers of public services shall form consumer counselling bodies with participation of the representatives of consumer associations and shall make decisions after obtaining an opinion from the counselling bodies in a transparent, impartial and non-discriminatory manner.

(7) The trader who provides public services shall establish consumer complaints commissions with participation of the representatives of consumer associations. The commissions shall respond in writing to complaints received from consumers within the period of 30 days after the day of the receipt of the complaint.

(8) The counselling bodies referred to in paragraph 6 of this Article or the consumer complaints commissions referred to in paragraph 7 of this Article shall be financed by the bodies establishing them, in line with their internal regulations.

(9) Claims of fees for public services, as well as for any household costs payable in regular monthly or quarterly amounts are subject to one-year statute of limitations.

#### *Connection to a distribution network*

##### Article 25

The trader who provides a public service through a distribution network shall enable consumers to be connected to the distribution network and to use the connection, network and services in accordance with special regulations, concession agreements or general acts of local self-government unit on whose area the service is being provided under terms and conditions which are non-discriminatory, known beforehand and contractually agreed.

#### *Termination of the provision of a public service*

##### Article 26

(1) If an invoice issued by a service provider is challenged in court or out-of-court proceedings, and the consumer duly pays all subsequent undisputed invoices, the trader – public service provider may not suspend the provision of the service until the completion of the said judicial or extrajudicial proceedings.

(2) If a public service provider has suspended the provision of public services before being informed by a competent body or a person about an action taken under paragraph 1 of this Article, it shall resume the provision of public services to the consumer pending the completion of the court or out-of-court proceedings.

(3) The obligation referred to in paragraphs 1 and 2 of this Article shall also apply if the provider of public services institutes a forced collection procedure against the consumer.

(4) A court or out-of-court proceedings within the meaning of paragraphs 1 and 2 of this Article shall be considered any proceedings envisaged under current regulations, as well as any proceedings envisaged by the general terms and conditions or other rules of the provider of public services.

#### *Maintaining the quality of public services*

## Article 27

The trader shall maintain the quality of rendered public services in accordance with the law, special regulations and trade practices .

## Article 28

(1) The bodies which are granting public service licences shall ensure, each within scope of authority, take care of the safety, regularity and quality of the public service they provide, and that the service is equally available to all consumers in an equal manner.

(2) The competent bodies referred to in paragraph 1 of this Article shall ensure that conditions for competition in the field of public services prevail.

## Chapter V

### ADVANCE PAYMENT

#### *Interest on advance payment*

## Article 29

(1) Where the trader requires for a purchase or expressly makes the purchase of the product or the provision of the service conditional upon advance payment in whole or in part or in instalments and delivers the product or renders the service after receiving such advance payment, and if the time of delivery is longer than one month, it shall upon delivery pay interest to the consumer at the interest rate granted for three-month time deposits by the trader's commercial bank for the whole period from the date of advanced payment to the delivery date.

(2) The provision of paragraph 1 of this Article shall apply even if the trader is unable to deliver the contracted product or service.

## Chapter VI

### CONTRACTS CONCLUDED AWAY FROM THE TRADER'S BUSINESS PREMISES

#### *Scope of application*

## Article 30

(1) The provisions of this Chapter shall apply to contracts concluded during excursions organised by the trader away from its business premises, during the trader's visits to the consumer's home, the home of another consumer, or the consumer's place of work.

(2) The provisions of this Chapter shall also apply to contracts offered for conclusion by the consumer under the terms similar to those described in paragraph 1 of this Article, regardless of whether or not the consumer was bound by the terms of that offer before its acceptance by the trader

(3) The trader who negotiates a contract as described in paragraph 1 of this Article shall present his or her identification card to the consumer.

## *Contracts excluded from the scope of this Chapter*

### Article 31

- (1) The provisions of this Chapter of the Act do not apply to:
- contracts concluded for the construction on immovable property,
  - contracts for sale, rent or lease or other rights relating to immovable property,
  - contracts for the periodical supply of foodstuffs, beverages or other goods intended for everyday consumption supplied to the home of the consumer by regular roundsmen,
  - contracts concluded on the basis of the trader's catalogue, if the consumer had a chance to read it without the presence of the trader or its representative, if it was understood that on the basis of that contract or another contract concluded at a later date there would be continuity of contact between the trader and the consumer, and if in both the catalogue and the contract the consumer was clearly informed about his or her right to rescind the contract pursuant to Article 33 of this Act,
  - insurance contracts,
  - securities purchase contracts.
- (2) The provisions of this Chapter shall apply to contracts for the sale of a product intended to be installed in immovable property and to construction contracts for repair or renewal of immovable property.

## *Information on the right to rescind the contract*

### Article 32

- (1) For contracts concluded under this Chapter of the Act the trader shall be required to furnish to the consumer a notification on the consumer's right to rescind the contract as provided in Article 33 of this Act.
- (2) The notification shall contain the name or firm name of the trader, its address, the date of dispatch, data required for contract identification, especially the indication of the contractual parties, the subject of the contract and its price, and the period for the rescission of the contract referred to in Article 33, paragraph 1 of this Act.
- (3) The notification must be delivered to the consumer at the moment of contract conclusion at the latest.
- (4) In the event of a dispute the trader shall be required to prove that it has delivered the information referred to in paragraphs 1 to 3 of this Article in good time.

## *Rescission of the contract*

### Article 33

- (1) The consumer shall be entitled, without stating any reason, to rescind the contract referred to in this Chapter within 14 days of the receipt of the notification referred to in Article 32.
- (2) A contract shall be rescinded by giving a written notice.
- (3) A contract shall be considered rescinded when the trader receives the notice of rescission.
- (4) A contract shall be considered rescinded in a timely manner if the notice of rescission was sent within the period for rescission referred to in paragraph 1 of this Article.

*Rescission if the information on the right to rescind has not been provided*

Article 34

If the consumer has not received the notification referred to in Article 32 of this Act, his or her right to rescind the contract pursuant to Article 33 shall not be subject to a time limit.

*Consequences of the rescission of the contract*

Article 35

(1) In the case of the rescission of the contract, the consumer shall be required to return the delivered product to the trader at his or her own expense.

(2) The consumer will not be liable for damage sustained by the trader as a result of rescission.

(3) Not later than 30 days from the receipt of the written notification of the rescission the trader shall reimburse all the sums received from the consumer up to that moment on the basis of the contract, increased by the interest rate granted for three-month time deposits by the trader's commercial bank for the whole period from the date of receipt of the written notification of rescission to the date of payment.

Chapter VII

DISTANCE CONTRACTS

*The notion of a distance contract*

Article 36

Distance contract means any contract concerning goods or services concluded between a trader and a consumer under an organised distance sales or service-provision scheme run by the trader, who, for the purpose of that contract, makes exclusive use of one or more means of distance communication.

*Means of distance communication*

Article 37

(1) Means of distance communication are any means which, without the simultaneous physical presence of the trader and the consumer at the same place, may be used for the conclusion of a contract between those parties.

(2) Means of communication covered by paragraph 1 of this Article include: addressed and unaddressed printed matter, standard letters and postcards, promotional leaflets with order form, catalogues, telephone with and without human intervention, radio, videophone, videotext, facsimile machine, television, and electronic mail.

*Operator of a means of distance communication*

Article 38

(1) Operator of a means of distance communication means any person whose trade, business or profession involves making one or more means of distance communication available to users.

- (2) Advertising of phone services with the '060' prefix shall be prohibited, unless the advertisement is accompanied by the trader's full name and address, and a fixed telephone line number and the registration number of the company providing the said telephone services.
- (3) Telecommunication companies in the Republic of Croatia which provide the '060' prefix services shall compile a public directory of such numbers indicating the service they provide, along with its price, the name of the company which owns this number, the company's registration number, full address and the fixed telephone line number.
- (4) If the above data is not available, traders may not provide services of 060 telephone numbers.

#### *Scope of application of the provisions of this Chapter*

##### Article 39

The provisions of this Chapter of the Act do not apply to contracts:

- relating to financial services covered by the provisions of Chapter VIII of this Part of the Act, except for the provisions of Articles 42, 53 and 54 of this Chapter of the Act,
- concluded by means of automatic vending machines,
- concluded with telecommunications operators through the use of public payphones,
- construction contracts,
- concluded with the aim to acquire immovable property rights, except for rental contracts and lease contracts
- concluded at an auction.

#### *Exclusion from application of certain provisions of this Chapter*

##### Article 40

- (1) The provisions of Articles 43 to 51, and Article 52, paragraph 1 do not apply to:
  - contracts for the continuous supply of foodstuffs, beverages or other goods intended for everyday consumption supplied to the home of the consumer, to his or her residence or to his or her workplace,
  - contracts for the provision of tourist services.
- (2) Exceptionally, in the case of outdoor leisure events, the trader can reserve the right not to apply Article 52, paragraph 2 in specific circumstances.

#### *Ban on conclusion of certain contracts through the means of distant communication*

##### Article 41

It shall not be permitted to conclude through the means of distant communication contracts for the sale of medicinal products, medical devices and veterinary products, medical devices, explosives, weapons and other products which require the competent ministry's

approval for placing on the market.

### *Restrictions on the use of means of distance communication*

#### Article 42

(1) The use of automated calling systems without human intervention (automatic calling machines), electronic mail and fax machines for the conclusion of contracts shall require the consumer's prior consent.

(2) The use of other means of distance communication for the conclusion of contracts may only be allowed if the consumer has not expressed his or her manifest objection.

(3) The use of the means of distance communication in the cases specified in paragraphs 1 and 2 of this Article shall not be charged to the consumer.

#### *Prior information*

#### Article 43

(1) In good time prior to the conclusion of any distance contract, the consumer shall be provided with the following information:

- the trader's name or firm name, registration number and seat of the trader or the contact person to whom the consumer may address any complaints,
- the product or service offered and their name,
- the main characteristics of the goods or services,
- the price of the goods or services including all taxes,
- delivery costs,
- the arrangements for payment, delivery or performance,
- after-sales services to be performed (repair, sale of spare parts),
- guarantees on the goods or services,
- the consumer's right of rescission of the contract pursuant to Article 45 and the period for rescission,
  - situations where the consumer's right of rescission is excluded,
  - conditions and procedure for cancelling the contract, where it is of unspecified duration or a duration exceeding one year,
- the cost of using the means of distance communication, where it is calculated other than at the basic tariff,
  - the period for which the offer or the price remains valid,
  - the minimum duration of the contract in the case of contracts for the supply of products or services to be performed continuously.

(2) The information referred to in paragraph 1 shall contain the trader's clearly expressed commercial purpose and shall be provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used.

(3) In the case of telephone communication, the identity of the trader and the commercial purpose of the call shall be made explicitly clear at the beginning of any conversation with the consumer.

(4) The information shall contain a warning that a contract in the name and on behalf of a minor or a person deprived of legal capacity may be concluded only by their legal guardians, or a warning that persons with partial legal capacity may conclude a contract only with the

approval of their legal guardian.

### *Confirmation of prior information*

#### Article 44

(1) Not later than at the time of delivery of a product or the beginning of the provision of a service, the consumer must receive written confirmation of prior information or confirmation in another durable medium accessible to him/her.

(2) Confirmation of prior information shall contain all data contained in prior information.

(3) In the case of a contract for service performed on only one occasion and invoiced by the operator of the means of distance communication, the trader will not be required to give the confirmation of prior information referred to in paragraph 1 of this Article; however, the consumer must in all cases be able to obtain the seat of the trader or any other address to which he or she may address any complaints.

(4) Where the trader is required to provide confirmation of prior information, the burden of proof concerning the existence of prior information shall lie with it.

### *Right of rescission of the contract*

#### Article 45

(1) Any contract concluded using a means of distance communication, which is subject to the rules contained in this Chapter of the Act, can be rescinded by the consumer within seven days without giving any reasons.

(2) In the case of a contract for the sale of products, the period of rescission referred to in paragraph 1 of this Article shall begin from the day on which the consumer receives the product, provided that before the delivery the consumer received the confirmation of prior information referred to in Article 44.

(3) In the case of a service contract, the period referred to in paragraph 1 of this Article shall begin from the day of the conclusion of the contract, or, if the consumer has not received the confirmation of prior information by the time of the conclusion of the contract, from the day on which the consumer receives the confirmation of prior information.

### *Period of rescission if prior information has not been furnished*

#### Article 46

(1) If the trader fails to furnish the confirmation of prior information referred to in Article 44, the consumer shall have the right to rescind the contract within three months.

(2) In the case of a contract for the sale of products, the period of rescission referred to in paragraph 1 of this Article shall begin from the day on which the consumer receives the product.

(3) In the case of a service contract, the period referred to in paragraph 1 of this Article shall begin from the day of the conclusion of the contract.

(4) If, within the period referred to in paragraph 1 of this Article, the trader provides the confirmation of prior information referred to in Article 44 of this Act, the consumer shall have the right to rescind the contract within 14 days of the receipt of the confirmation of prior information.



### *The form of the rescission of the contract*

#### Article 47

(1) A contract shall be rescinded by dispatching a written notice of rescission to the trader.

(2) The contract shall be deemed to have been rescinded at the moment when the trader receives the notice of rescission.

(3) The contract shall be deemed to have been rescinded on time if the written notice of rescission has been dispatched within the time-limits referred to in Articles 45 and 46 of this Act.

### *Consequences of rescission of the contract*

#### Article 48

(1) In the case of the rescission of the contract, the consumer shall return the product to the trader at his or her own expense.

(2) The consumer shall not be liable for damage sustained by the trader as a result of the rescission of the contract.

(3) Within 30 days of receiving a written notification of rescission the trader shall reimburse all the sums received from the consumer up to that moment on the basis of the contract, increased by interest on arrears at the rate of the trader's bank for 3-month time deposits for the whole period from the receipt of the written notification of rescission to the date of payment.

### *Exclusion of the right of the rescission of the contract*

#### Article 49

Unless otherwise agreed between the parties, the consumer shall not have the right to rescind the contract pursuant to Articles 45 and 46 in respect of contracts:

– for the provision of services if performance has begun, with the consumer's agreement, before the end of the period within which the consumer had the right to rescind the contract,

– for the supply of goods or services the price of which is dependent on fluctuations in the financial market,

– for the supply of goods made to the consumer's specification or clearly personalised or which, by reason of their nature, cannot be returned or are liable to deteriorate or expire rapidly,

– for the supply of audio or video recordings or computer software which were unsealed by the consumer,

– for the supply of newspapers, periodicals and magazines,

– for gaming and lottery services.

### *The impact of the rescission of the contract to the loan granted*

#### Article 50

If the price of a distance contract for the supply of goods or services is fully or partly covered by a loan granted to the consumer by the trader or by a third person who has granted the loan to the consumer on the basis of an agreement with the trader, the loan contract shall

be rescinded with the rescission of the contract for the supply of goods or services.

#### *Consequences of the rescission of the loan contract*

##### Article 51

If the consumer, in accordance with the provisions of the Articles 45 to 50 of this Act, rescinds the loan contract, the trader or a third person who has granted the loan to him/her on the basis of an agreement between that third person and the trader shall not be entitled to any cost compensation, interest or penalties from the consumer.

#### *Timely performance of the contract*

##### Article 52

(1) Unless the parties have agreed otherwise, the trader must perform a distance contract for the supply of goods or services within a maximum of 30 days from the day following that on which the consumer forwarded his or her order to the trader.

(2) Where a trader fails to perform its side of the contract on time, even if on the grounds that the goods or services ordered are unavailable, the consumer must be informed of this situation and may, at his or her choice, declare that he or she rescinds the contract or give the trader a reasonable period of time for compliance with the contract.

(3) Where in a situation referred to in paragraph 2 of this Article the consumer decides to rescind the contract, the trader must refund any sums he has received as soon as possible and not later than 30 days following the first day of delay, increased by interest on arrears at the rate of the trader's bank for 3-month time deposits for the whole period from the receipt of the written notification of withdrawal to the date of payment.

#### *Misuse of the consumer's credit card by the trader*

##### Article 53

If in connection with a contract under this Chapter fraudulent use has been made of a consumer's credit or debit card, the injured consumer is entitled to request payment cancellation, or, if payment has already been made, to request to have the paid sums returned to him or her by the trader, increased by interest on arrears at the rate of the trader's bank for 3-month time deposits for the whole period beginning with the date of payment.

#### *Prohibited supply of products without their being ordered by the consumer*

##### Article 54

(1) It is prohibited to supply product or service to a consumer without their being ordered by the consumer beforehand, where such supply involves a demand for payment.

(2) If contrary to paragraph 1 of this Article the trader supplies a product to the consumer, the product shall be considered the trader's promotional gift to the consumer.

(3) A provision in a trader's general terms of contract or in its offer sent without a previous order placed by the consumer, according to which the absence of a reply would constitute consent, shall be null and void.

(4) The provisions of paragraphs 1 to 3 of this Article shall be without prejudice to the provisions of this or other laws concerning the tacit renewal of contracts.

*Burden of proof*

Article 55

In civil proceedings initiated against the trader or the operator of a means of distance communication for an infringement of the rights of the consumer under this Chapter, the burden of proof in respect of the existence of prior information, the written confirmation of prior information and the compliance with time schedules laid down in a contract concluded through the use of a means of distance communication shall lie with the trader or the operator of the means of distance communication.

Chapter VIII

DISTANCE CONSUMER CONTRACT CONCERNING FINANCIAL SERVICES

*Notion*

Article 56

(1) Distance consumer contract concerning financial services is a contract between the trader – supplier of financial services (hereinafter: suppliers of financial services) and consumer whose object is the provision of a financial service and which is concluded as part of an organised sale of products or services by a supplier of financial services involving the exclusive use of one or more means of distance communication referred to in Article 37 of this Act before and during the conclusion of such contract and for the purpose of concluding it.

(2) Financial services covered by the contracts referred to in paragraph 1 of this Act are banking services, crediting services, insurance services, including voluntary pension insurance services, investment services, building society saving services and payment services.

(3) If under a consumer contract concerning financial services a certain service is successively provided or a series of separate services are provided to the consumer, the provisions of this Chapter of the Act shall apply only to the initial contract.

(4) If the consumer is successively provided with a certain service or a series of separate services without an initial contract concluded between him or her and the trader, the provisions of Articles 57 to 62 of this Act shall apply only when the service is provided for the first time.

(5) If, in a case referred to in the paragraph 4 of this Act, a service of a certain nature has not been provided to the consumer for a period of one year, the next service of the same nature shall be considered the first service which shall then, pursuant to paragraph 4 of this Article, be subject to the provisions of Articles 57 to 62 of this Act.

*Prior information*

## Article 57

(1) In good time prior to the conclusion of the contract, the consumer shall be informed about the supplier of financial services, the financial service which is the subject of the contract, the details of the contract and the method of dispute resolution.

(2) Prior information referred to in paragraph 1 of this Article shall contain data listed in Articles 58 to 61 of this Act.

(3) Prior information referred to in paragraph 1 of this Article shall contain a clearly indicated commercial intention of the supplier of financial services and must itself be unambiguous, clear, intelligible and adapted to the used means of distance communication.

(4) In the case of telephone communication, the identity of the supplier and the commercial purpose of the call shall be made explicitly clear at the beginning of any conversation with the consumer. Upon the consumer's explicit consent, the person contacting the consumer on behalf of the supplier of financial services shall inform the consumer about his or her identity and the nature of his or her relationship with the supplier of financial services, as well as provide data required under subparagraphs 1, 2 and 5 of Article 59 and subparagraph 1 of Article 60 of this Act. The person contacting the consumer shall inform the consumer that at his or her request he or she might be provided with further information and specify the nature of such information. In any case, the supplier of financial services shall send to the consumer information containing all data referred to in Articles 58 to 61 of this Act as part of obligations referred to in Article 62 of this Act.

(5) Information on the consumer's contractual obligations supplied to the consumer before the conclusion of the contract shall match the consumer's contractual obligations which would arise from the law applicable to the contract if the latter were concluded.

(6) Along with data mentioned in paragraphs 1 to 5 of this Article and Articles 58 to 61 of this Act, the consumer shall be provided with any other data required under regulations concerning specific financial services which are the subject of the contract between the consumer and the supplier of financial services.

## Article 58

(1) Information about the supplier of financial services shall contain his or her name or firm name, a full address of the supplier's residence or seat, any other address which may be relevant to its relationship with the consumer, its registration number and the register in which the supplier is entered.

(2) If the activity of the supplier of financial services is subject to a licence or permission issued by a public authority, information about the supplier shall include relevant details from that licence or permission, such as the name of the authority which has issued the licence or permission, the validity and wording of the licence or permission.

(3) If the supplier of financial services has a representative in the Republic of Croatia, information about the supplier shall include the name or the firm name of the representative and full address relevant to the consumer's relationship with the representative.

(4) If the consumer establishes a contractual relationship through a person other than the supplier's representative, information about the supplier of financial services shall include the name or firm name of that person, the capacity in which it is acting, the seat or full address relevant to the consumer's relationship with that person.

## Article 59

Information about the financial service which is the object of the contract shall contain:

- a description of the main characteristics of the financial service,
- the total price to be paid by the consumer to the supplier for the financial service, including all taxes, related fees, charges and other expenses, or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it,
- where relevant, notice indicating that the financial service includes financial instruments involving special risks related to the specific features of the instrument or of the financial service being offered,
- where relevant, notice indicating that the price or performances of the financial service depend on fluctuations in the financial markets outside the supplier's control and that historical performances are no indicators for future prices and future performances of that financial service,
- notice of the possibility that other taxes or costs may exist in line with tax regulations that are not paid to or via the supplier of financial services,
- any limitations of the period for which the information provided is valid,
- the arrangements for payment and for performance,
- any specific additional cost for the consumer for using the means of distance communication.

## Article 60

Information about the details of the contract shall include:

- the existence or absence of a right of unilateral rescission in accordance with Article 63 of this Act and, where the consumer's right of rescission exists, its duration and the conditions for exercising it, including information on the amount which the consumer may be required to pay on the basis of Article 66, paragraph 3 of this Act, as well as the consequences of non-exercise of that right,
- the minimum duration of the contract in the case of financial services to be performed permanently or recurrently,
- information on any rights the parties may have to cancel the contract early or unilaterally, including any penalties or other compensation arrangements imposed by the contract in such cases,
- practical instructions for exercising the right of unilateral rescission referred to in Article 63 of this Act, indicating, *inter alia*, the address to which the information on a rescission should be sent,
- indication of the state whose laws are applicable to the supplier's relations with the consumer prior to the conclusion of the contract,
- indication of any contractual clause on law applicable to the distance contract concerning financial services and/or indication of the court competent for dealing with any disputes which may arise from that contract,
- indication of the language, or languages, in which the contract and the prior information are drawn up, and furthermore in which language, or languages, the supplier, with

the agreement of the consumer, undertakes to communicate during the duration of the contract.

#### Article 61

Information on the method of settling disputes shall include:

- indication as to whether or not there is an out-of-court complaint and redress mechanism for the consumer that is party to the distance contract and, if so, the conditions for having access to it,
- indication as to the existence of guarantee funds or other compensation arrangements.

#### *The form of prior information*

#### Article 62

(1) In good time prior to the conclusion of any distance contract or pre-contract, the consumer shall be provided with prior information referred to in Article 57 of this Act containing all data mentioned in Articles 58 to 61 of this Act on paper or in another durable medium accessible to the consumer.

(2) The supplier shall fulfil its obligation under paragraph 1 of this Article immediately after the conclusion of the contract, if the contract has been concluded at the consumer's express request using a means of distance communication which does not enable providing data referred to in Articles 58 to 61 of this Act.

(3) At any time during the contractual relationship the consumer shall be entitled, at his or her request, to receive a paper copy of his or her contract with the supplier of financial services. In addition to that, the consumer shall also be entitled to change the means of distance communication used, unless this is incompatible with the contract concluded or the nature of the financial service provided.

#### *Right of unilateral rescission of the contract*

#### Article 63

(1) The consumer shall have a period of 14 days to rescind any distance consumer contract concerning financial services without giving any reason, or 30 days in distance contracts relating to life insurance.

(2) The period of rescission specified in paragraph 1 shall begin from the day of the conclusion of the distance contract, or, in respect of life insurance contract, from the time when the consumer is informed that the contract has been concluded.

(3) If, in accordance with Article 62, paragraph 2 of this Act, the distance contract is concluded before the consumer has received prior information containing all data required under Articles 58 to 61 of this Act, the period for rescission specified in paragraph 1 of this Article shall begin from the day when this information was received by him or her in accordance Article 62, paragraph 2 of this Act.

(4) The right of unilateral rescission under paragraph 1 of this Article does not apply to:

- financial services whose price depends on fluctuations in the financial market outside the supplier's control, such as services related to foreign exchange transactions; money market instruments; transferable securities; units in collective investment undertakings; financial-futures contracts, including equivalent cash-settled instruments; forward interest-rate agreements, interest-rate, currency and equity swaps;

- travel and baggage insurance policies or similar short-term insurance policies of less than one month's duration,

- contracts whose performance has been fully completed by both parties at the consumer's express request before the consumer exercises his or her right of rescission under this Article.

(5) The provisions of this Article do not apply to loan contracts under Article 94 of this Act, concluded for the purchase of the right to use immovable properties on a timeshare basis.

### *The form of unilateral rescission of the contract*

#### Article 64

(1) The contract can be rescinded by a notice in a written form or on another durable medium available and accessible to the recipient, dispatched before the expiry of the deadline laid down in Article 63, with the practical instructions given to him or her in the prior information referred to in Article 57 concerning the exercise of the right of unilateral rescission to be followed.

(2) The contract shall be deemed rescinded on time if the notice of rescission is dispatched before the deadlines specified in paragraph 1 of Article 63 of this Act expire.

(3) The contract shall be rescinded once the authorised person has received the notice of rescission.

### *Beginning of the performance of the contract*

#### Article 65

(1) The supplier of financial services can begin the performance of the contract before the deadline under Article 63 of this Act set for unilateral rescission of the contract expires only if the consumer has given his or her express approval.

(2) The supplier of financial services is not entitled to request fulfilment of the consumer's contractual obligations before the deadline under Article 63 of this Act set for the unilateral rescission of the contract expires.

### *The consequences of the unilateral rescission of the contract*

#### Article 66

(1) In the case of unilateral rescission of the contract referred to in Article 63 of this Act, the consumer will not be held responsible for any damage sustained by the supplier of financial services, nor will he or she be liable to any penalty or compensation as a result of such rescission.

(2) In the case of the rescission of the contract each party shall return to the other what it has received from the other on the basis of the contract.

(3) If such return is incompatible with the nature of the provided service, the consumer shall pay the price of the part of the service provided to him or her up to the moment of rescission.

(4) The amount which under the paragraph 3 of this Article the consumer is obliged to pay to the supplier of financial services shall be in proportion to the extent of the service already provided and in any case shall be such that it could not be construed as a penalty or compensation for the rescission of the contract.

(5) The supplier of financial services may not require the consumer to pay any amount on the basis of paragraph 3 of this Article unless it can prove that the consumer was duly notified about the amount payable in the prior notice referred to in Article 57 of this Act and in the manner provided in Article 60, paragraph 1, subparagraph 1 of this Act.

(6) The supplier of financial services may not require the consumer to pay the price of the part of the service provided before the unilateral rescission of the contract referred to in Article 63 of this Act, if the service has been provided contrary to Article 65, paragraph 1 of this Act.

(7) Should the consumer rescind the contract on the basis of Article 63 of this Act, the supplier shall, without any undue delay and not later than within 30 days of the day when the authorised person was notified on the rescission of the contract, return to the consumer any sums it has received from him or her on the basis of the distance contract, reduced by the sum which the supplier of financial services is entitled to collect from the consumer by virtue of paragraph 3 of this Article.

(8) Should the consumer rescind the contract on the basis of Article 63 of this Act, he or she shall return to the supplier whatever he or she has received from the supplier on the basis of the contract without any undue delay and not later than within 30 days of the dispatch of the notice of rescission.

### ***The impact of the rescission of the financial service contract on other contracts***

#### **Article 67**

If the consumer exercises his or her right of unilateral rescission of the contract referred to in Article 63 of this Act, the rescission of the financial service contract will result in the rescission of any other contract which, based on or in connection with the financial service contract, the consumer may have concluded with the supplier of financial services or with other person that concluded a contract with the consumer on the basis of a prior agreement with the supplier of financial services.

#### ***Acting contrary to the provisions of this Chapter of the Act***

#### **Article 68**

(1) If the supplier of financial services fails to fulfil any obligation under this Chapter of the Act, the consumer shall be entitled to rescind the contract at any time.

(2) In the case referred to in paragraph 1 of this Article, the consumer shall not be required to compensate the supplier of financial services for any damage sustained by it nor pay to it any other compensation on account of the rescission of the contract.



### *Burden of proof*

#### Article 69

(1) In civil proceedings initiated in respect of disputes arisen from the contracts covered by this Chapter of the Act, the supplier of financial services shall be required to prove that it has fulfilled its obligation to provide the consumer with prior information and that the consumer has agreed to conclude the contract or to be provided with the financial service before the expiry of the period for the unilateral rescission of the contract referred to in Article 63 of this Act.

(2) Any contractual term providing that the burden of proof in respect of the circumstances mentioned in paragraph 1 of this Article should lie with the consumer shall be considered an unfair contract term within the meaning of the provisions of Chapter XI of this Act.

### *Appropriate application*

#### Article 70

The provisions of Articles 42, 53 and 54 of this Act shall be appropriately applied to contracts referred to in this Chapter of the Act.

## Chapter IX

### CONSUMER LOAN CONTRACT

#### *The notion of consumer loan contract*

##### Article 71

(1) "Consumer loan contract" is a contract whereby a creditor undertakes to make a certain sum of money available to a consumer and the consumer undertakes to repay the sum plus a certain interest over a period and in a manner as laid down in the contract.

(2) A contract for the supply of goods or services, whereby a consumer is entitled to pay the purchase in several instalments, the sum of which is higher than the price of goods or services purchased, shall be considered a consumer loan contract for the purpose of this Act. Agreements for the provision on a continuing basis of a service, where the consumer has the right to pay for them, for the duration of their provision, by means of instalments, are not deemed to be loan contracts.

(3) "Creditor" means any person or a group of persons who in the course of its business or profession concludes loan contracts with consumers.

(4) For the purposes of this Act, a creditor shall be considered as a trader.

#### *Loan contracts excluded from the provisions of this Chapter*

##### Article 72

(1) The provisions of this Chapter do not apply to:

– hiring contracts except where these provide that the title will pass ultimately to the hirer at the end of the contract period,

- loan contracts under which no interest is charged provided the consumer agrees to repay the loan in a single payment,
- loan in the form of allowed overdraft on a current account, except for the provisions of Articles 77, 85 and 86 of this Act,
- loan contracts under which the consumer is required to repay the loan within a period not exceeding three months,
- loan contracts under which the consumer is required to repay the loan by a maximum number of four instalments within a period not exceeding 12 months.

(2) Article 84 of this Act shall not apply to loan contracts where the creditor's claims are secured by mortgage on immovable property.

(3) Article 84 of this Act shall not apply to loan contracts concluded for the purpose of acquiring, constructing, extending, renovating, leasing or acquiring some other rights on immovable property or a part thereof.

### *The form of consumer loan contract*

#### Article 73

Consumer loan contract shall be made in writing and the consumer shall receive at least one copy of it.

### *The content of a consumer loan contract*

#### Article 74

(1) A consumer loan contract shall include data required for its identification, its terms and conditions, and in particular:

- a statement on the amount of the loan granted,
- a statement of the nominal annual interest rate and a statement of the conditions under which the nominal annual interest rate may be amended,
- a statement of the costs charged at the time the contract is concluded and a statement of the conditions under which these costs may be amended,
- a statement on the effective interest rate,
- a statement of the conditions under which the effective interest rate may be amended,
- a statement of the amount, number and frequency or dates of the instalments which the consumer must make to repay the loan, as well as of the payments for interest and other charges, as well as, where possible, an indication of the total amount of these payments,
- a statement of the total loan cost,
- a statement of the obligation and terms of savings or cash deposit, if that is a condition for granting the loan,
- a statement of the nominal annual interest rate on the loan and the nominal annual interest rate on the deposit amount, if that is a condition for the loan contract to be granted,
- a statement of repayment sureties,
- a statement of the conditions for and procedure of rescission of the loan contract.

(2) Where it not possible to state the effective interest rate, the written contract shall

include a statement of at least the nominal annual interest rate and the charges payable at the time the contract is concluded, as well as the conditions under which these may be amended.

### *Effective interest rate*

#### Article 75

(1) Effective interest rate is the total cost of the loan to the consumer expressed on the annual basis as a percentage of the amount of loan granted.

(2) Effective interest rate is calculated in accordance with the circumstances existing at the time of the conclusion of the loan contract.

(3) The calculation of the effective interest rate shall be made on the assumption that the loan contract is valid and that the creditor and the consumer fulfil their obligations under the terms and by the dates agreed.

(4) In the case of loan contracts containing clauses allowing variations in the nominal rate of interest and the amount of other charges, the annual percentage rate of charge shall be calculated on the assumption that interest and other charges remain fixed.

(5) If the loan contract does not specify the amount of loan granted, for the purposes of calculating the effective interest rate, the amount of loan granted shall be HRK 10,000.00.

(6) If there is no fixed timetable for repayment, and one cannot be deduced from the terms of the loan contract, for the purposes of calculating the effective interest rate, the duration of the loan shall be deemed to be one year.

(7) Where the loan contract provides that the loan will be made available in several disbursements, for the purposes of calculating the effective interest rate, it shall be assumed that the total amount of loan has been made available at the earliest time provided for in the contract.

(8) The minister responsible for consumer protection affairs, in agreement with the minister responsible for financial affairs, shall prescribe by a decision the unique method for the calculation of the effective annual interest rate.

### *Total cost of the loan*

#### Article 76

(1) Total cost of the loan means all the costs of the loan including interest and other charges that the consumer is required to pay for the loan granted.

(2) The total cost of the loan does not include:

– charges payable by the consumer for non-compliance with any of his or her commitments laid down in the loan contract,

– charges for the transfer of funds to the consumer's account,

– charges for keeping an account intended to receive payments towards the reimbursement of the loan, the payment of interest and other charges except where the consumer does not have the freedom to choose whether or not he or she wants the opening of such a special account and where such charges are abnormally high,

– transfer charges,

– membership subscriptions to associations or groups and arising from agreements other than the loan contract, even though such subscriptions have an effect on the terms of the loan,

– charges for loan repayment insurance, except for insurance designed to ensure payment in the event of the death, illness or unemployment of the consumer, if the amount of insurance agreed for such cases, together with relevant interest and other charges, is equal to or less than the total amount of the loan and if such insurance is imposed by the creditor as a condition for loan being granted,

– costs other than the selling price of the products or services for the supply of which the loan is granted and which the consumer would be required to pay under a purchase contract irrespective of whether he or she pays them with his or her own or borrowed money.

### *Consumer information*

#### *Article 77*

(1) In good time before the conclusion of the contract the creditor shall inform the consumer in writing of the maximum loan amount, if any, the nominal annual rate of interest and the conditions under which it can be changed, the charges imposed at the time of the conclusion of the contract and conditions and procedure for the rescission of the contract.

(2) Following the conclusion of the loan contract the creditor shall keep the consumer informed about any changes in the nominal annual rate of interest or any other charges in good time after a change has been made.

(3) Information pursuant to paragraph 2 of this Article will be delivered to the consumer in the statement of account, in the form of a written notice or in another way agreed between the parties.

### *Advertising*

#### *Article 78*

Any advertisement, regardless of whether or not it is an offer for a loan, displayed on business premises or delivered to the consumer in some other way, in which a person offers loan or offers to arrange a loan contract, shall also include a statement of the nominal annual interest rate, a statement of any other loan charges and a statement of the effective interest rate.

### *Early repayment*

#### *Article 79*

(1) The consumer shall be entitled to discharge his or her obligations under the loan contract before the time fixed by the contract.

(2) In a case referred to in paragraph 1 of this Article, the consumer shall be entitled to an equitable reduction in the total cost of the loan consisting of the difference between the amount of interest which should have been paid by the time fixed by the contract and the amount of interest paid up to the moment of loan repayment.

### *Changes on the part of the creditor*

#### *Article 80*

Where the assignment of the creditor's rights under the loan contract result in changes on the part of the creditor, the consumer shall be entitled to plead against the new creditor any

defence he or she may have had against the original creditor, except for strictly personal defences.

*Repayment of the loan by means of cashless payment*

Article 81

(1) If it is agreed that the consumer is entitled to repay the loan by means of bills of exchange, cheques or some other means of cashless payment, the creditor shall use such means of payment only for repayment of the loan.

(2) Should the creditor make use of a bill of exchange, a cheque or some other means of cashless payment for another purpose, it shall be liable for any damage this may cause to the consumer.

*Prohibition of the assignment of rights to the creditor*

Article 82

Under the loan contract the consumer cannot be obliged to assign to the creditor or a third person his or her rights or in favour of them to restrict his or her rights which in the event of non-performance or inadequate performance of the contract he or she has against the person with whom he or she has concluded a contract financed by the loan contract.

*Liability of the creditor for the trader*

Article 83

(1) Where for the purpose of purchasing a product or service the consumer has entered into a loan contract with a person other than the trader of that product or service and the loan contract has been concluded on the basis of a pre-existing agreement between a creditor and the trader of the product or service under which the creditor undertakes to grant consumer loans exclusively for the purchase of the goods and services of that trader, the consumer is entitled, in the event of failure to exercise his or her rights vis-à-vis the trader due to non-performance or inadequate performance of the purchase contract, to claim from the creditor the compensation for damage he or she has sustained due to non-performance or inadequate performance of the purchase contract.

(2) If in a case referred to in paragraph 1 of this Article the purchase contract is rescinded, the loan contract shall also be rescinded and the creditor shall not be entitled to claim from the consumer compensation for the damage it has sustained thereof.

(3) The creditor who pursuant to paragraph 1 of this Article has compensated the consumer for the damage the consumer has sustained due to non-performance or inadequate performance of the purchase contract may claim from the trader the refund of any sums it has paid on behalf of the trader, interest accrued from the day of payment, charges involved in its dispute with the consumer from the moment the creditor has notified the trader about that dispute, as well as compensation for the damage the creditor has sustained thereof.

*Statutory lien*

Article 84

A creditor who has concluded a loan contract with a consumer shall have a statutory lien

on the chattels the consumer has bought with the borrowed money, intended to secure the payment of its claims under the loan contract.

*Loan in the form of permitted current account overdraft*

Article 85

(1) If a bank or another financial institution acting as a creditor grants a loan to the consumer in the form of permitted current account overdraft, the consumer must be informed before or when concluding the loan contract of the permitted upper overdraft limit on the current account, the nominal annual interest rate and the conditions under which it can be changed, the charges imposed at the time of the conclusion of the contract, the conditions under which these can be amended, as well as the conditions and procedure of the rescission of the contract.

(2) After the conclusion of the loan contract, the creditor shall keep the consumer informed on any changes in nominal annual interest rate or any other charges, in good time after the change has occurred.

(3) The information referred to in paragraphs 1 and 2 of this Article shall be furnished to the consumer together with the statement of account, in the form of a written notice or in another manner agreed between the parties.

*Tacitly accepted current account overdraft*

Article 86

(1) Where a bank or another financial institution tacitly permit current account overdraft, it shall ensure that the consumer is informed of the annual rate of interest and the charges applicable, and of any amendment thereof, where the overdraft extends beyond a period of three months.

(2) The information referred to in paragraph 1 of this Article shall be furnished to the consumer together with the statement of account, in the form of a written notice or in another manner agreed between the parties.

Chapter X

CONTRACT RELATING TO THE RIGHT TO USE IMMOVABLE PROPERTY ON A  
TIMESHARE BASIS

*Scope of application*

Article 87

(1) The provisions of this Chapter regulate one or more contracts concluded for a period covering not less than three years by which the trader, directly or indirectly, establishes for the consumer or transfers to the consumer, the right to use one or more immovable properties or one or more special parts of the immovable property during a specified or specifiable period of the year, while the consumer agrees to pay the total price to the trader.

(2) The provisions of this Chapter shall be applicable even when they have been circumvented by different wording of contractual provisions, and regardless of whether the

right stipulated in paragraph 1 of this Article is of a proprietary or obligatory legal nature according to the applicable law.

(3) The contract referred to in paragraph 1 of this Article must be in writing.

(4) The contract referred to in paragraph 1 of this Article must be drawn up in the official language of the state in which the consumer has his or her domicile or residence or, at the consumer's option, in the official language of the state of which he or she is a national, and in the official language of the state where the immovable property is situated.

(5) The consumer must receive at least three copies of the contract.

#### *Registration of the right to use immovable property on a timeshare basis*

##### Article 88

(1) A person who acquires the right to use immovable property on a timeshare basis under the contract according to Article 87 of this Act, shall be entitled to register such a right in the land register, if the property is situated in the Republic of Croatia.

(2) The right to use an immovable property on a timeshare basis shall not go against the right of a person who registered his or her right to the immovable property in good faith and acting with confidence in the land register before the right to use an immovable property on a timeshare basis was registered.

#### *Prior information*

##### Article 89

(1) The trader shall provide, to anyone who requests an information concerning the right to use immovable property on a timeshare basis, a written information which contains, in addition to a general description of the immovable property, at least a brief and accurate information regarding the data set out in Article 90, paragraph 1, subparagraphs 1 to 8, 10, 13 and 14, or, if no building has yet been built on the immovable property, information regarding the data set out in Article 90, paragraph 2, subparagraphs 1 to 5 of this Act, as well as an instruction on how further information can be obtained.

(2) Information referred to in paragraph 1 of this Article must be drawn up in the official language of the state in which the consumer has his or her domicile or residence or, at the consumer's option, in the official language of the state of which he or she is a national, and in the official language of the state where the immovable property is situated.

(3) Any advertisement referring to a contract relating to the right to use immovable property on a timeshare basis shall indicate the possibility of obtaining prior information, as well as the place where it can be obtained.

#### *The content of the contract or the binding preliminary contract*

##### Article 90

(1) Contract relating to the right to use immovable property on a timeshare basis, as well as the preliminary contract whereby the parties undertake to conclude such a contract, shall contain:

- the name or firm name and the domicile or seat of the parties,
- the right authorising the trader to transfer the right to use immovable property in the manner as provided in Article 87, paragraph 1 of this Act,
- the name or firm name and the domicile or seat of the owner of the immovable property,

if the trader entering into the contract with the consumer, pursuant to this Chapter of this Act, is not the owner of the immovable property,

- the legal nature of the right which is the subject of the contract covered by this Chapter of the Act and the entitlements arising for the consumer from that right, as well as the conditions governing the exercise of that right in the state in which the immovable property is situated, and a statement if those conditions have been fulfilled or, if they have not, what conditions remain to be fulfilled,

- when the property has been determined by the contract, an accurate description of that immovable property and its location,

- municipal services, such as electricity, water, maintenance, telephone, refuse collection, that consumer has at his or her disposal and on what conditions,

- the common facilities, such as swimming pool or sauna, which consumer has a right to use and on what conditions,

- rules regarding the maintenance and management of the immovable property,

- the exact period within which the consumer may use the immovable property and the date from which the consumer may start using the immovable property,

- the contractual price, an estimate of the costs of the use of common facilities and municipal service, data for the calculation of the costs relating to the use of the immovable property, the mandatory statutory charges, such as taxes and fees, the amount of costs for maintenance and management of the immovable property,

- a clause whereby the trader states that the use of the immovable property is not associated with any other costs other than those specified in the contract,

- a clause as to whether or not it is allowed to exchange or sell the right to use immovable property on a timeshare basis, as well as clause relating to costs if an exchange or sale is carried out by the trader or by a person authorised by the trader in the contract,

- information regarding the consumer's right to unilateral rescission of the contract pursuant to Article 92 of this Act, the manner of rescission and the rescission period, the person to whom a written notice of rescission should be sent, and the nature and amount of the costs which the consumer will be required to defray in case of rescission of the contract,

- manner of the rescission of the loan contract concluded in connection to the contract relating to the right to use immovable property on a timeshare basis,

- the date and place of each party's signing of the contract.

(2) Where at the time of the conclusion of the contract or the preliminary contract no building has been built yet on the immovable property, the contract relating to the right to use immovable property on a timeshare basis, as well as the preliminary contract whereby the parties undertake to conclude that contract, shall, in addition to data listed in paragraph 1 of this Article, contain:

- state of completion of the building,

- reasonable estimate of the deadline for completion of the building,

- the number of the building permit and the name and full address of the authority which has issued it,

- the state of completion of electric, gas, water and telecommunication network,

- a guarantee regarding timely completion of the building and a guarantee by which the trader undertakes an obligation to reimburse the payment made by the consumer under the contract in case of delayed completion of the building, and the conditions governing the operation of those guarantees.



### *The impact of prior information on the contract*

#### Article 91

(1) Data provided in the prior information required under Article 89 of this Act form the part of the contract, unless the parties expressly agree by the contract to depart from the data contained in the prior information.

(2), Data provided in the prior information under Article 89 of this Act may be changed by the contract only if those changes resulted from circumstances that were beyond the trader's control unless the parties expressly agree otherwise.

(3) Prior to the conclusion of the contract, trader has an obligation to inform the consumer regarding any changes provided in the prior information, and those changes must be expressly mentioned in the contract.

### *The consumer's right to unilateral rescission of the contract*

#### Article 92

(1) The consumer may for any reason rescind the contract or the preliminary contract, by a written notice sent to the person named in the prior information, the contract or the preliminary contract:

a) within 14 days from the conclusion of the contract or the preliminary contract, without giving any reason,

b) within three months from the conclusion of the contract or the preliminary contract, where the contract or the preliminary contract do not contain all the data laid down in the Article 90 of this Act,

c) within one month from the conclusion of the contract or the preliminary contract, if the trader has failed to provide prior information containing data referred to in Article 89, paragraph 1 of this Act,

d) if the trader, within three months following the conclusion of the contract or the preliminary contract, provides the consumer in writing with the data which at the time of signing of the contract or the preliminary contract were missing, the consumer, unless he or she has already dispatched the notice of rescission, has the right to rescind the contract or the preliminary contract within 14 days from the day when the last missing data was communicated to him or her in writing,

e) if the consumer does not receive the missing data within three months from the conclusion of the contract or the preliminary contract, he or she has the right to rescind the contract within 14 days from the expiry of three months period.

(2) Notice of rescission shall be deemed to have been provided on time if dispatched within the deadlines referred to in paragraph 1 of this Article.

(3) In case of rescission of the contract or the preliminary contract referred to in paragraph 1 item a, of this Article, the consumer shall reimburse only the costs of the notarisation of the contract or the preliminary contract, if so expressly stipulated in the contract.

(4) Where the contract or the preliminary contract is rescinded in accordance with paragraph 1, items b) through e) of this Article, the consumer will not be required to defray any costs to the trader.

### *Burden of proof*

#### Article 93

In case of a dispute as to whether the prior information, contract or the preliminary contract have been delivered to the consumer and at which date, the burden of proof shall lie with the trader.

### *The impact of unilateral rescission on the loan contract*

#### Article 94

(1) If, for the purpose of paying the price under the contract relating to the right to use immovable property on a timeshare basis, the consumer has been granted a loan by the trader or by a third person which has granted the loan on the basis of an agreement with the trader, unilateral rescission of the contract relating to the right to use immovable property on a timeshare basis shall result in the rescission of the loan contract.

(2) In a case referred to in paragraph 1 of this Article, the consumer will not be required to pay the agreed contractual interest, damage or penalty, if any, and the party which has granted the loan shall return to the consumer what it has received from him or her by virtue of the loan contract.

### *Prohibition of advance payments*

#### Article 95

The trader is prohibited to request from the consumer any payments on the basis of a signed contract or preliminary contract, before the end of the period during which the consumer may exercise the right to rescind the contract in accordance with Article 92, paragraph 1 of this Act.

## Chapter XI

### UNFAIR TERMS IN CONSUMER CONTRACTS

#### *Notion of unfair contractual term*

##### Article 96

(1) A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the contractual parties' rights and obligations, to the detriment of the consumer.

(2) Certain contractual term shall be deemed not individually negotiated where it has been drafted in advance by the trader and the consumer has therefore not been able to influence its content, particularly when it is a term of the pre-formulated standard contract of the trader.

(3) The fact that certain aspects of a term or specific contractual term have been individually negotiated, whereas an overall assessment of the contract indicates that it is nevertheless a pre-formulated standard contract of the trader, shall not exclude a possibility that the rest of the contract terms be assessed as unfair.

(4) Where the trader claims that a certain contractual term in a pre-formulated standard contract has been individually negotiated, the burden of proof in this respect shall lie with it.

(5) The provisions of this Chapter of the Act do not apply to contractual terms by which statutory provisions of mandatory nature are included in the contract, or by which provisions and the principles of conventions binding upon the Republic of Croatia are included in the contract.

*Certain contractual terms which may be regarded as unfair*

Article 97

Contractual terms which, subject to conditions referred to in Article 96 of this Act may be regarded as unfair are, for instance:

– term limiting or excluding the liability of a trader for the damage caused by the death or personal injury of a consumer, if the damage resulted from the trader's harmful act,

– term limiting or excluding the rights of the consumer vis-à-vis the trader or other third person in the event of total or partial non-performance of the contract, including the provision excluding the offset of consumer's debt against the debt which the trader has against the consumer,

– term by which the consumer undertakes to fulfil the contract, whereas the fulfilment of the trader's obligation is subject to a condition whose fulfilment depends exclusively on trader's will,

– term providing that the trader retains sums paid by the consumer where the latter decides not to conclude the contract, or when he or she does not fulfil the contract, without providing for the consumer the same right in the event that the trader decides not to conclude the contract or does not fulfil the contract,

– term by which the consumer undertakes to pay compensation for failure to fulfil which is substantially higher than actual damage,

– term enabling the trader to rescind the contract on a discretionary basis, where the same right is not provided for the consumer,

– term enabling the trader to retain the sums paid for services not yet performed by him, where it is the trader himself who rescinds the contract,

– term enabling the trader to cancel a contract of indeterminate duration without giving reasonable cancellation period, except where there are justifiable grounds for cancellation,

– term providing that a contract of fixed duration will be extended for an indeterminate or determinate period of time unless the consumer declares, before the termination of the contract, that he or she does not want an extension of the contract, if the deadline fixed for the consumer to declare so is unreasonably short,

– term imposing upon the consumer certain obligations, when the consumer had no opportunity of becoming acquainted with that provision prior to the conclusion of the contract,

– term allowing the trader to unilaterally alter contractual terms without a valid reason which is specified in the contract,

– term allowing the trader to unilaterally alter characteristics of the product or service, without a valid reason,

– term providing that the price of goods or service is to be determined at the time of the supply of the goods or at the time of the rendering of the service, or term allowing the trader to increase the price, without in both cases giving the consumer the right to rescind the contract if the actual price is substantially higher than the price agreed upon at the time of the conclusion of the contract,

– term giving the trader the right to assess whether the product sold or service rendered is in conformity with the contract,

– term giving the trader the exclusive right to interpret all or some terms of the contract,

– term excluding or limiting liability of the trader for obligations undertaken for it by its agent or term by which a duty to honour these obligations is subject to compliance with certain formalities,

- term obliging the consumer to fulfil his or her contractual obligations, even in situations where the trader did not fulfil its contractual obligations,
- term allowing the trader to transfer, without the prior agreement of the consumer, rights and obligations under the contract on the third person, if the consumer is thus placed in the less favourable position,
- term excluding, limiting or encumbering the consumer's right to realise his or her contractual rights before the court or other competent body, particularly the term obliging the consumer to submit dispute to arbitration not envisaged by the applicable law, term preventing presentation of the evidence favourable to the consumer or term shifting burden of proof on the consumer when, according to the applicable law, burden of proof should lie with the trader.

### *Criteria for assessing the contract*

#### Article 98

When assessing whether specific contractual term is fair, following shall be taken into account: the nature of the goods or service for which the contract was concluded, all circumstances before and during the conclusion of the contract, other terms of the contract as well as some other contract which represents the main contract in relation to the contract being assessed.

### *Impermissibility of assessing certain contractual terms*

#### Article 99

It is not permitted to assess whether the contractual terms relating to the subject of the contract and the price are fair, in so far as these terms are clear, easily understandable and noticeable.

### *Contractual terms in written form*

#### Article 100

When the law or an agreement of the parties provides that the contract must be in a written form, contractual terms must be written clearly and understandably and must be easily noticeable.

### *Interpretation of the contract*

#### Article 101

(1) Dubious or unintelligible contractual terms are interpreted in a manner that is more favourable to the consumer.

(2) Rule from paragraph 1. of this Article does not apply to the procedures initiated by virtue of Article 103 of this Act.

### *The consequences of unfairness of the contractual term*

#### Article 102

(1) An unfair contractual term shall be deemed null and void.

(2) The nullity of a certain contractual term does not entail the nullity of the contract itself, if the contract can survive without the null and void term.

*Seeking injunction to prohibit the use of unfair contractual terms*

Article 103

(1) Any authorised person shall be entitled to seek from the court an injunction to prohibit the use of a certain contractual term in standard contracts which is unfair within the meaning of this Chapter of the Act, regardless of whether these terms infringe the rights and interests of consumers in the Republic of Croatia or in some Member State of the European Union.

(2) Proceedings referred to in paragraph 1 of this Article may be initiated against an individual trader or a group of traders from the same economic sector who use certain unfair term in their standard contracts, against traders' chambers and interest associations who promote the use of certain unfair terms and against the drafter of a code of conduct which promotes the use of unfair contractual terms.

*Entities authorised to initiate proceedings*

Article 104

(1) Bodies and organisations which have a legitimate interest in the collective protection of the consumers, such as consumer protection associations, public bodies competent for consumer protection and traders' interest associations, are authorised to take legal action referred to in Article 103 of this Act.

(2) At the proposal of the minister responsible for consumer protection, the Government of the Republic of Croatia shall issue a decree designating the persons having a legitimate interest in the collective protection of the consumers.

(3) The Government of the Republic of Croatia shall publish a decree referred to in paragraph 2 of this Article in the Official Gazette and submit it to the European Commission.

(4) If unfair terms in the standard contracts of a certain trader or a group of traders with seat in the Republic of Croatia influence or may influence the position of consumers in some Member State of the European Union, proceedings referred to in Article 103 may be initiated by a consumer protection association from that state or by some other independent body established under the laws of that state for the protection of the collective interests of consumers.

(5) In a case referred to in paragraph 4 of this Article, the authorised entity shall prove its authority to initiate proceedings referred to in Article 103 of this Act with the list of entities having a legitimate interest in the collective protection of the consumers, compiled by the European Commission, in which the name of that entity is indicated.

(6) The list referred to in paragraph 5 of this Article shall be submitted to the court in the form of the copy of the Official Journal of the European Communities in which that list is published, with a certified Croatian translation.

## Article 105

If the court decides to prohibit the use of a certain unfair contractual term, it shall order the defendant to have this decision published in the media at its own cost.

## Article 106

The provisions of Articles 103-105 of this Act shall not affect application of the private international law rules regarding determination of the applicable law.

## Part III

### UNFAIR BUSINESS PRACTICE

#### Chapter I

#### GENERAL PROVISIONS

##### *Scope of application*

#### Article 107

(1) The provisions of this Part of the Act apply to trader's unfair business practice related to the consumer as laid down in Articles 109 to 115 of this Act, which is used before, during and after transaction in relation to a certain product.

(2) The provisions of this Part of the Act shall not affect:

- the application of rules of contract law, in particular the rules regarding formation, validity and legal effects of a contract,
- the application of provisions regulating health and safety aspects of products,
- the application of provisions regulating the jurisdiction of the courts,
- the application of provisions regulating conditions for establishing performance or systems of authorisation of regulated professions, or the application of deontological codes of certain professions that are provided by law or some other specific rules governing regulated professions, whose purpose is to uphold a high level of integrity of these professions.

(3) The provisions of this Part of the Act shall not apply to the application of the laws and other regulations relating to the certification and indication of the standard of fineness of articles of precious metals.

(4) If some aspects of unfair business practice are covered by special laws, the provisions of this Part of the Act shall not apply to these aspects of unfair business practice.

##### *Prohibition of unfair business practice*

#### Article 108

Unfair business practice shall be prohibited.

*Notion of unfair business practice*

Article 109

(1) A business practice shall be unfair if:

- it is contrary to the requirements of professional diligence, and
- it, with regard to the certain product, substantially affects or is likely to substantially affect the economic behaviour of the average consumer to whom it is directed or it reaches the average member of the certain consumer group towards which such business practice is directed.

(2) Business practice which is likely to substantially affect the economic behaviour of only clearly identifiable group of consumers who are particularly exposed to a certain business practice or the particular product because of their physical or mental infirmity, age or credulity in a way which the trader should have foreseen, shall be assessed from the perspective of the average member of that consumer group.

(3) Paragraph 2 of this Article does not affect the admissibility of using common and legal advertising practice of making exaggerated statements or to the statements which are not meant to be taken literally.

(4) In particular, business practice shall be regarded as unfair when:

- it is misleading as set out in the Articles 110 to 112 of this Act, and
- aggressive as set out in the Articles 113 to 115 of this Act.

Chapter II

MISLEADING BUSINESS PRACTICE

*Misleading actions*

Article 110

(1) A business practice shall be regarded as misleading if it contains false information regarding the circumstances listed in paragraph 3 of this Article and is therefore untruthful or if it in any way, including overall presentation, deceives or is likely to deceive the average consumer and which in either case causes or is likely to cause consumer to make a decision that he or she would not have made otherwise.

(2) A commercial practice referred to in paragraph 1 of this Article shall be regarded as misleading, even if information in respect of one or more of the circumstances mentioned in paragraph 3 of this Article is true, provided that it will lead or is likely to lead the average consumer to take a transactional decision that he or she would not have taken otherwise.

(3) Misleading business practice referred to in paragraph 1 of this Article refers to the following circumstances:

- the existence or nature of the product,
- the main characteristics of the product, such as its availability, benefits, risks, execution, composition, accessories, after-sale consumer assistance and system of complaint handling, methods and date of manufacture or supply of the product, delivery, fitness for achieving certain purpose, use, quantity, specification, geographical or commercial origin, the results expected from its use or the results and material features of tests or checks carried on the product or in regard to the product,
- the extent of the trader's commitments, the motives of the business practice and the nature of the sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the trader or the product,
- the price of the product and the manner in which the price is calculated, or the existence of a specific price advantage,
- the need for servicing, spare parts, replacement or repair,
- the nature, attributes or rights of the trader or its agent, such as its identity, assets, qualifications, status, approvals, affiliation in certain associations or connection with some other entities, its industrial, commercial or intellectual property, awards and acknowledgements it received,
- the consumers' rights, including the rights that the consumer has in accordance with the rules concerning liability for implied warranty,
- risks that the consumer may be exposed to.

(4) A business practice shall also be regarded as misleading if, taking account of all its features and other circumstances of the case, in a specific case it lead or is likely to lead the average consumer to make a transactional decision that he or she would not have made otherwise , and which involves

- any form of placing the product on the market, including by means of comparative advertising, which creates confusion between that product and some other product, or with trade mark, proprietary name or some other distinguishing mark of a competitor on the market,
- disregard of commitments by the trader which are contained in code of conduct obliging that trader, assuming that its obligation to honour such code is not merely intended but is a firm obligation capable of being verified and assuming that the trader indicated within a framework of the business practice that it is bound by such code of conduct.

### *Misleading omissions*

#### Article 111

(1) A business practice shall be regarded as misleading if, in a specific case, and taking into account all features and circumstances of such practice, as well as the limitations of the specific communication medium used, it does not contain material information which, depending on the context, the average consumer needs in order to make a transactional decision based on full information and thereby causes or is likely to cause him or her to make a transactional decision that he or she would not have made otherwise.



(2) It shall also be regarded as a misleading omission if:

- a trader hides information from paragraph 1 of this Article or if the provided information is unclear, unintelligible, ambiguous or untimely,
- if the trader fails to indicate the business purpose of the business practice - if not already apparent from the context of its conduct - and if, in each of the given cases, causes or is likely to cause the average consumer to make a transactional decision that he or she would not have made otherwise.

(3) Where the trader while carrying out the business practice uses a specific medium of communication with certain limitations of space or time, while assessing whether certain material information has been omitted, these limitations as well as other measures taken by the trader to make the information available to consumer in some other way, shall be taken into account.

(4) In the case of an invitation to purchase, if not already apparent from the context, the following information shall be regarded as important:

- information regarding the main characteristics of the product, to an extent appropriate considering the communication medium used and considering the product,
- information regarding the seat and the identity of the trader, including its firm name or name and, if necessary, the seat and the identity of the person on whose behalf it is acting,
- information regarding the price, or where the nature of the product does not allow the price to be calculated in advance, information regarding the manner in which the price will be calculated, including, if necessary, all postal costs and costs of freight and delivery, and when these costs cannot be calculated in advance, an indication that these additional costs are also payable,
- information regarding the conditions of payment, delivery, other elements of the contract performance, as well as regarding the system of complaint handling, if these elements depart from the requirements of professional diligence,
- information regarding the existence of the right to rescind or cancel the contract, for products and transactions involving the existence of such a right.

(5) Information which the trader, according to this Act and other regulations, has to submit to the consumer during any kind of business communication, including advertising and marketing, shall also be regarded as important.

(6) A transactional decision referred to in paragraphs 1 and 2 of this Article shall pertain to any decision taken by the consumer referring to whether or not, and under what conditions, he will make a transaction, whether or not he will pay the price in full or in instalments, whether or not he will keep the product or make any further business dealings with the product, whether or not he will use certain rights he is entitled to pursuant to the contract, regardless of whether the consumer has decided to take action or refrain from action.

### *Conducts representing misleading business practice*

#### Article 112

In any event, the following acts shall be deemed misleading business practice:

- trader's claim that it is a signatory to a certain code of conduct, although in reality that is not the case;
- use of a trade mark, quality mark or similar marks without required approval;
- trader's claim that codes of conduct which it applies has been approved by a public or other body, although in reality that is not the case;
- trader's claim that its activity, business practice or product has been approved, recommended or allowed by a public or private body, although in reality that is not the case, or although its practice or product does not comply with the terms of such approval, recommendation or allowance;
- invitation to purchase products at a specified price without indicating the existence of justifiable grounds the trader may believe that it will not be able to offer the supply of that or similar product at the indicated price, in time and in quantities that are reasonable regarding the product, the extent of advertising of the product and the price offered, or that it will not be able to make sure that the other trader will supply that or similar product at the indicated price, in time and in quantities that are reasonable regarding the given circumstances;
- invitation to purchase a product at a specified price and then refusing to show the advertised product to the consumer, or refusing to take consumer's order or to deliver the product within a reasonable time, or demonstrating a defective sample of the product with the intention of promoting some other product;
- falsely claiming that a product will be available only for a very limited period, or that it will be available on certain specific terms for a very limited period, in order to induce the consumer to immediate decision to buy which deprives the consumer the possibility or time to make a decision based upon understanding all relevant circumstances;
- undertaking an obligation towards the consumer to provide certain after-sales services in a language which is not an official language of the EU Member State where the trader is located and then providing these services only in some other language, without clearly warning the consumer about it before the conclusion of the contract;
- claiming or otherwise creating the impression that a product can legally be sold, although in reality that is not the case;
- presenting rights given to consumer by law as a distinctive feature of the trader's offer;
- using editorial contents in the media for the paid promotion of the product without making it clear in such contents, either by words, marks or sounds clearly recognisable to the consumer, that it constitutes advertising;
- making inaccurate statements concerning the nature and extent of the risk to which the personal security of the consumer or members of his or her family may be exposed if the consumer does not purchase the product;
- advertising a product similar to a product made by some other manufacturer, in such a manner as to deliberately induce the consumer to mistakenly conclude that the advertised product is made by that other manufacturer;
- establishment, operation or promotion of the pyramid promotional scheme where a consumer must give certain consideration in order to get certain compensation, primarily because he or she introduced new consumers into the scheme rather than because he or she bought or consumed a product;

- claiming that the trader is about to cease its activity or move its business premises, although in reality that is not the case;
- claiming that product can make winning in games of chance possible;
- falsely claiming that a product can cure certain illness, dysfunction or malformation;
- passing on inaccurate information regarding market condition or regarding the availability of the product with the intention of inducing the consumer to acquire the product under the conditions that are less favourable than usual market conditions;
- claiming within a framework of business practice that a prize contest or promotion is announced, without awarding the described prize or its reasonable equivalent;
- designating a product as "gratis", "free", "without charge" or with similar marks if the consumer has to pay for that product anything other than the unavoidable cost of responding to the business practice, costs of delivery or receipt of the product;
- inclusion of an invoice or some other claim for payment into promotional materials, which gives the consumer the impression that he or she has already ordered the promoted product, although that is not the case;
- falsely claiming or creating the impression that the trader is not acting within the framework of its business, commercial or craft activity or within his or her profession, or falsely representing himself as a consumer;
- creating the false impression that after-sales services in relation to a product are also available in an EU Member State other than the one in which the product was sold.

### Chapter III

## AGGRESSIVE BUSINESS PRACTICE

### *Notion*

#### Article 113

(1) A business practice shall be regarded as aggressive if, in a particular case, taking into account all of its features and other circumstances of the case, due to the harassment, coercion, including the use of physical force or threat and undue influence, it substantially impairs or is likely that it will substantially impair the freedom of choice or conduct of the average consumer with regard to the product and which thereby causes him or her or is likely to cause him or her to make a transactional decision that he or she would not have made otherwise .

(2) The transactional decision referred to in paragraph 1 of this Article shall mean any decision taken by the consumer, pertaining to whether or not, and under what circumstances, he will conclude the transaction, whether he will pay the price in full or in instalments, whether or not he will use the rights he is entitled to pursuant to the contract, regardless of whether or not the consumer has decided to take action or refrain from action

## *Harassment, coercion and undue influence*

### Article 114

In determining whether harassment, coercion, including force or threat, or undue influence was used in a business practice, the following shall be taken into account:

- time, place or nature of the business practice, as well as the persistence shown by the trader thereby,
- whether the trader used threatening or abusive language or behaviour,
- whether the trader exploited misfortunate or other circumstances regarding the consumer, and which were of such a significance as to impair the consumer's capacity to make a reasonable judgement, if the trader was aware that these circumstances will influence the consumer's decision regarding the product,
- existence of any onerous or disproportionate limitation of non-contractual nature which the trader imposed upon the consumer, in case the consumer wishes to exercise some right under the contract, including a right to rescind or a right to cancel a contract or the right to choose another product or another trader,
- use of a threat to take actions not allowed under the law.

## *Conducts representing aggressive business practice*

### Article 115

In all cases, the following forms of aggressive business practice are unfair:

- creating the impression that the consumer cannot leave the business premises until he or she concludes a contract;
- visiting the consumer in his or her home and ignoring the consumer's request to leave his or her home or ignoring his or her request not to return except in the case and to the extent it is necessary to enforce the fulfilment of a contractual obligation foreseen by regulations;
- persistent and unwanted communication with the consumer by telephone, fax, e-mail or other means of distance communication, except in the cases and to the extent it is justified to enforce the fulfilment a contractual obligation foreseen by regulations. This provision shall not affect the application of this Act or other regulations restricting or prohibiting the use of certain means of distance communication in certain circumstances;
- requiring a consumer who claims damages based upon an insurance policy to produce certain documents which are reasonably not relevant for the assessment whether such claim is justified, or systematically avoiding to respond to consumer's pertinent correspondence with the intention to dissuade him or her from exercising his or her contractual rights;
- advertising directly inducing children to buy advertised product or to persuade their parents or other adults to buy advertised product for them;

- demanding from the consumer to make immediate or deferred payment for the product, or return of the product or safekeeping of product by the trader, which the trader has procured, although the consumer never ordered it;

- directly informing the consumer that if he or she does not buy the product, the trader's business or existence will be in jeopardy;

- creating the false impression that the consumer has won or will win, unconditionally or depending upon fulfilment of certain act, certain prize or some other equivalent benefit, when in reality no prize or other equivalent benefit is envisaged, or creating the false impression that taking any action towards the realisation of such prize or other benefit is subject to the certain payment or compensation of costs by the consumer.

## Chapter IV

### COMPARATIVE ADVERTISING

#### Article 116

(1) For the purposes of this Chapter of the Act, advertising of products and services means any notice in whatever form given within one's occupation or business and designed to promote one's products or services.

(2) Comparative advertising is any advertising which for the purpose of promoting certain product or service directly or indirectly makes a reference to a competitor on the market, or which directly or indirectly makes a reference to a competitive product or service.

(3) Comparative advertising shall be permitted only when the conditions laid down in Article 117, paragraph 1 of this Act are met.

#### *Conditions for permitted comparative advertising*

#### Article 117

(1) Comparative advertising shall be permitted when:

– it is not misleading within the meaning of the provisions of Article 112 of the Act,  
– it compares products or services meeting the same needs or if it compares products or services intended for the same purpose,

– it objectively compares features of different products or services which are material, relevant, comparable and verifiable,

– it does not create confusion on the market regarding the relationship between the advertiser and its competitors or does not create confusion on the market regarding the relationship between the product or service that is advertised and the competitive product or service,

– it does not discredit a competitor on the market, its activities, products, services, trade marks or trade names,

– for product with designation of origin, products of the same origin are compared,

– it is not directed towards unfair exploitation of the reputation of a trade mark, trade name or other distinguishing marks of a competitor on the market, its product or service,

– it is not directed towards unfair exploitation of the designation of origin of a competing product or service,

– it does not relate to product or service being advertised as imitations of product or

service bearing a protected trade mark or trade name.

(2) If comparative advertising refers to a product or service that is being offered within the framework of the special offer, advertisement shall indicate in a clear and unequivocal way the period of validity of the special offer and whether the purchase of the product or service within the special offer is subject to their availability.

*Seeking injunction for the cessation or prohibition of unpermitted comparative advertising*

Article 118

(1) Persons having a legitimate interest shall be authorised to require the State Inspectorate or another competent body to order cessation of unpermitted comparative advertising.

(2) If the advertisement has not yet been published, but its publication is imminent, the persons having a legitimate interest shall be authorised to require the competent body referred to in paragraph 1 of this Article to order prohibition of publication of unpermitted comparative advertising.

(3) Upon a party's request, along with an injunction for the cessation of unpermitted comparative advertising, the competent authority referred to in paragraph 1 of this Article may order at the expense of the advertiser publication of the judgement in full or in part, or order at the expense of the advertiser the publication of a corrective statement.

*Issues not open for deliberation*

Article 119

While deciding on claims under Article 118 of this Act the competent body will not take into consideration whether disputed advertising has caused or is likely to cause damage to someone, nor whether or not it is the advertiser's fault that its comparative advertising is unpermitted.

*Presumption of inaccuracy of claims in an advertisement*

Article 120

(1) The authorised body referred to in Article 118 of this Act shall require from the advertiser to furnish evidence that confirm accuracy of disputed factual claims produced in the advertisement within 7 days.

(2) If the advertiser fails to furnish the required evidence within the period set in paragraph 1 of this Article or if the authorised body referred to in Article 118 of this Act considers that the furnished evidence is incomplete, the disputed factual claims produced in the advertisement shall be deemed inaccurate.

Part IV

ENTITIES COMPETENT FOR THE CONSUMER PROTECTION

Chapter I

## NATIONAL CONSUMER PROTECTION PROGRAMME

### Article 121

(1) The National Consumer Protection Programme designates the foundations of the consumer protection policy and defines the selection and the scope of priorities in the area of consumer protection that will be financed from the State Budget of the Republic of Croatia.

(2) The National Consumer Protection Programme shall be adopted by the Croatian Parliament at a proposal of the Government of the Republic of Croatia for a period of four years.

(3) The Government of the Republic of Croatia shall inform the Croatian Parliament on the realisation of the consumer protection policy from the National Consumer Protection Programme.

(4) Activities related to the implementation of the consumer protection policy and work co-ordination of all entities competent for the consumer protection in relation to the application of the National Consumer Protection Programme shall be performed by the ministry responsible for consumer protection affairs.

## Chapter II

### ENTITIES COMPETENT FOR THE CONSUMER PROTECTION

#### Article 122

Entities competent for the consumer protection are: the Croatian Parliament, the Government of the Republic of Croatia, the ministry responsible for consumer protection affairs, the State Inspectorate and other competent inspections, the National Consumer Protection Council, bodies of the units of local and regional self-government, the Croatian Chamber of Economy, the Croatian Chamber of Trades and Crafts, the Croatian Employers' Association, and other public bodies within their competence in the area of consumer protection and consumer protection associations.

#### *National Consumer Protection Council*

#### Article 123

(1) The Government of the Republic of Croatia shall establish and appoint the National Consumer Protection Council (hereinafter: the Council) for a term of four years. The Council shall be composed of the representatives of state administration bodies competent for consumer protection area, the Croatian Chamber of Economy, the Croatian Chamber of Crafts and Trades, consumer protection associations and independent experts from the consumer protection area..

(2) The chairperson of the Council shall be appointed by the Croatian Government for a term of four years. The chairperson of the Council shall be an expert in the field of consumer protection.

(3) The Government of the Republic of Croatia, at the proposal of the majority of the Council members, can relieve a Council member prior to the expiry of his or her mandate and propose appointment of a new member.

(4) The Council is an advisory body to the Government of the Republic of Croatia.

(5) The Council shall have its secretary to perform professional duties on behalf of the Council. The secretary shall be appointed by the Government of the Republic of Croatia.

(6) Administrative tasks for the Council shall be carried out by the ministry responsible for consumer protection affairs.

(7) The Council shall participate in drafting the National Consumer Protection Programme and reports on the progress achieved in implementing the National Consumer Protection Programme, initiate amendments to the existing and the adoption of new consumer protection regulations, participate in drawing up consumer protection policies, and report to the Government of the Republic of Croatia on violations of good commercial practices.

(8) The work of the Council shall be public. The Council, upon agreement of the Government of the Republic of Croatia, shall adopt its Rules of Procedure.

(9) The Council shall submit annual reports to the Government of the Republic of Croatia on its work.

(10) Remuneration to the Council members and the secretary for their work shall be paid from the State Budget of the Republic of Croatia.

#### *Bodies of the units of local and regional self-government*

##### Article 124

Bodies of the units of local and regional self-government are obliged to systematically promote consumer protection in their territory and support activities of the consumer protection associations.

#### *Establishment and association of consumer protection associations*

##### Article 125

(1) Consumer protection associations are established by consumers for the promotion and protection of their rights and interests.

(2) Provisions of the Act on Associations shall appropriately apply to consumer protection associations.

(3) Consumer protection associations shall be independent in their activity in relation to traders' interests and shall not acquire any resources from traders.

(4) Consumer protection associations in the Republic of Croatia may associate for the purposes of implementation of consumer protection policy, mutual support and accomplishment of common interests on national and international level.

(5) The Union of Consumer Protection Associations may act on behalf of its members, and for the benefit of all consumers, in public and in front of state administration bodies, for the purpose of protecting common interests of consumers, present the views on proposals of regulations which may affect consumers.

(6) The Union of Consumer Protection Associations shall be a legal person.

(7) All associations shall equally contribute to the activities of the Union of Consumer Protection Associations.

#### *The activities of associations*

##### Article 126

Consumer protection associations may, in the area of consumer protection, particularly



engage in the following activities:

- provide preventive protection by providing information and advice to consumers for the purpose of consumer education,
- provide information to consumers regarding their rights and obligations and occurrences on the market,
- through accredited laboratories, carry out comparative tests of the products and publicise results through the media,
- through accredited laboratories in the country, as well as abroad if necessary, carry out subsequent tests of the products placed on the market,
- provide help to the harmed consumer while dealing with the trader,
- keep records regarding received consumer complaints and actions taken to solve them,
- give comments and proposals while adopting regulations relating to the area of consumer protection,
- initiate, before a competent body, proceedings from Article 131 of this Act,
- initiate, before a competent court, proceedings seeking injunction against a particular trader, a group of traders from the same economic sector or their interest associations to prohibit the use of unfair contractual terms in standard contracts,
- perform other activities in the area of consumer protection.

#### Article 127

(1) Activities in the area of consumer protection specified in the National Consumer Protection Programme, especially providing information and advice to the consumers, shall be carried out by consumer associations in co-operation with competent state administration bodies and bodies of the units of local and regional self-government.

(2) The minister responsible for consumer protection affairs, based on the public tender, shall decide on the allocation of financial resources to consumer protection associations for projects aimed to promote consumer protection, especially for the activities referred to in Article 126 of this Act.

#### *Consumer protection counselling centres*

#### Article 128

(1) The minister responsible for consumer protection affairs shall, in order to provide organised assistance to consumers, establish consumer protection counselling centres (hereinafter: counselling centre) and issue operating licences to the counselling centres according to criteria which will be prescribed in rules of procedure and which are ascertained in accordance with the needs set in the National Consumer Protection Programme for a specific period.

(2) The consumer protection counselling centres shall provide professional advice to consumers, keep records of the number and type of advice provided and report on their work to the ministry responsible for consumer protection affairs and competent inspections every three months.

(3) The ministry responsible for consumer protection affairs shall evaluate the professional qualifications of persons for the work at the counselling centres in accordance with the rules

of procedure regarding evaluation procedure of professional qualification of persons for the work at the counselling centres, which will be prescribed by the minister responsible for consumer protection affairs.

(4) The working premises of the counselling centres shall be provided for by the units of local and regional self-government in the place where the counselling centre is situated, whereas the resources for work shall be provided in the State Budget of the Republic of Croatia.

### Chapter III

## CONSUMER INFORMATION AND EDUCATION

### *Curricula*

#### Article 129

(1) Primary and secondary school curricula should contain basic knowledge concerning the rights and obligations relating to the consumer protection.

(2) The ministry responsible for consumer protection affairs in conjunction with the ministry responsible for education shall participate in preparing educational programmes on consumer protection within the curricula.

(3) The ministry responsible for consumer protection affairs and consumer protection associations shall co-operate with educational institutions **and** carry out other educational activities regarding information and education in the area of consumer protection.

### Part V

## PROTECTION OF THE CONSUMER'S RIGHTS

### Chapter I

## ALTERNATIVE CONSUMERS' DISPUTE RESOLUTION

#### Article 130

(1) In the event of a dispute between a consumer and a trader, a proposal for mediation may be filed with the Centre for Mediation of the Croatian Chamber of Economy, the Centre for Mediation of the Croatian Chamber of Trades and Crafts, or the Centre for Mediation of the Croatian Employers' Association, or charges may be brought at the Court of Honour of the Croatian Chamber of Economy, or the Court of Honour of the Croatian Chamber of Trades and Crafts.

(2) Mediation in the Centres for Mediation referred to in paragraph 1 of this Article shall be conducted in line with the Ordinance on mediation of the Croatian Chamber of Economy, the Ordinance on mediation of the Croatian Chamber of Trades and Crafts, and the Ordinance on mediation of the Croatian Employers' Association.

(3) The procedure at the Courts of Honour referred to in paragraph 1 of this Article shall be conducted in line with the Ordinance on the Court of Honour of the Croatian Chamber of

Economy, the Ordinance on the Court of Honour of the Croatian Chamber of Trades and Crafts, which shall stipulate that, apart from independent legal experts, representatives of traders and consumers must be equally represented in the Court's Council.

(4) The Croatian Chamber of Economy, the Croatian Chamber of Trades and Crafts and the Croatian Employers' Association shall issue, with the consent of the minister responsible for consumer protection, a Decision on the costs of mediation in consumer disputes, i.e. in procedures at the Court of Honour of the Croatian Chamber of Economy and the Court of Honour of the Croatian Chamber of Trades, which shall include provisions stipulating the remunerations, rewards and other costs of mediation and procedures referred to in paragraph 1 of this Article.

(5) The settlement reached in the procedure of mediation in the Centres referred to in paragraph 1 of this Article shall act as an execution document.

(6) Resources to cover the costs of mediation at the Centre for Mediation of the Croatian Chamber of Economy, the Centre for Mediation of the Croatian Chamber of Trades and Crafts, or the Centre for Mediation of the Croatian Employers' Association, and of the procedures at the Court of Honour of the Croatian Chamber of Economy, and the Court of Honour of the Croatian Chamber of Trades and Crafts referred to in paragraph 1 of this Article shall be secured in the State Budget.

## Chapter II

### COLLECTIVE PROTECTION OF CONSUMERS

#### Article 131

(1) Any authorised person is entitled to propose to the State Inspectorate or other competent body to initiate proceedings for an injunction for the cessation of conduct contravening the provisions of Articles 30 to 34, of Articles 107 to 120 of this Act, the provisions of Articles 400 to 429 and of Articles 881 to 903 of the Civil Obligations Act and the provisions of the Ordinance on advertising and providing information on medicinal products, homeopathic products and medical devices, regardless of whether such conduct violates the rights and interests of consumers in the Republic of Croatia or some Member State of the European Union.

(2) Proceedings referred to in paragraph 1 of this Article may be initiated against an individual trader or a group of traders from the same economic sector who act in contravention of the provisions of this Act and other regulations listed in paragraph 1 of this Article, against traders' chambers and interest associations who promote unlawful conduct or against a drafter of a code of conduct where the code promotes the use of unfair business practice, as defined in the provisions of Part III of this Act.

(3) Where the provisions of Articles 35 to 54 of this Act have been infringed by the operator of a means of distance communication, the authorised person is entitled to propose to the State Inspectorate or other competent body to initiate proceedings from paragraph 1 of this Article against that operator of a means of distance communication.

(4) The provisions of paragraphs 1 to 3 of this Article are without prejudice to the authority of the State Inspectorate or other competent body to initiate proceedings on its own initiative against the persons mentioned in paragraphs 1 to 3 of this Article who act in contravention of the provisions of this Act and other regulations listed in paragraph 1 of this Article.

### *Persons authorised to propose proceedings*

#### Article 132

(1) Proceedings referred to in Article 131 of this Act can be initiated by bodies and organisations established in accordance with the regulations dealing with the establishment and activity of these persons, which have a legitimate interest in the collective protection of consumers, such as for instance consumer protection associations, public bodies responsible for consumer protection and traders' chambers and interest associations.

(2) At the proposal of the minister responsible for consumer protection affairs, the Government of the Republic of Croatia shall issue a decree designating the persons having a legitimate interest in the collective protection of consumers.

(3) The decree referred to in paragraph 2 of this Article shall be published in the Official Gazette and submitted to the European Commission.

(4) If the conduct of a certain trader or a group of traders with seat in the Republic of Croatia, which contravenes the provisions of this Act and other regulations listed in Article 131 of this Act, affects or may affect the position of consumers in some Member State of the European Union, consumer protection association from that state or another independent body established under the laws of that state for the protection of the collective interests of consumers may propose to initiate proceedings referred to in Article 131 of this Act.

(5) In a case referred to in paragraph 4 of this Article, the authorised person shall prove its entitlement to propose to initiate proceedings referred to in Article 131 of this Act with the list of persons having a legitimate interest in the collective protection of consumers, compiled by the European Commission, in which the name of that person is included.

(6) The list mentioned in paragraph 5 of this Article, along with a proposal to take action (Article 131), shall be submitted by the authorised person to the State Inspectorate or another competent body as a copy of the edition of the Official Journal of the European Communities in which the list is published, with an attached certified Croatian translation.

### *Burden of proof*

#### Article 133

(1) Where the proceedings referred to in Article 131 of this Act were initiated due to the violation of the provisions of Articles 36 to 55 of this Act, the burden of proof regarding the delivery of prior information and written confirmation of prior information to the consumer and burden of proof regarding its compliance with time-limits for fulfilment of a contract concluded through the means of distance communication shall lie with the trader or the operator of a means of distance communication.

(2) Where the proceedings referred to in Article 131 of this Act were initiated due to the violation of the provisions of Articles 56 to 70 of this Act, the burden of proof concerning the

fulfilment of the obligation to issue prior information to the consumer and burden of proof concerning the consumer's consent to conclude the contract or to have the service agreed upon provided by the supplier of financial service before the expiry of the period for unilateral rescission of the contract referred to in Article 63 of this Act, shall lie with the supplier of financial services.

(3) In a case referred to in paragraph 2 of this Article, the contractual term providing that the burden of proof concerning the facts referred to in paragraph 2 of this Article shall lie with the consumer, shall be considered an unfair contractual term within the meaning of the provisions of Chapter XI, Part II of this Act.

#### Article 134

Where the proceedings referred to in Article 130 of this Act were initiated due to the violation of the provisions of Articles 107 to 115 of this Act, while deciding whether a business practice is unfair it will not be taken into consideration whether that practice has caused or is likely to cause damage to someone, nor whether the person against whom the proceedings are conducted is at fault for the business practice being unpermitted.

#### *Presumption of inaccuracy of factual claims*

#### Article 135

(1) If the proceedings referred to in Article 131 of this Act were initiated due to the violation of the provisions of Articles 107 to 115 of this Act, the State Inspectorate or other competent body, if appropriate considering the circumstances of the case and taking into account the trader's legitimate interests, shall request the trader against whom the proceedings are conducted to furnish evidence within seven days confirming the accuracy of factual claims made in relation to a business practice.

(2) If evidence from paragraph 1 of this Article is not furnished to the State Inspectorate or other competent body within the given period or if the State Inspectorate or other competent body considers that the furnished evidence is incomplete or insufficient, the factual claims made in relation to a business practice shall be considered as inaccurate.

#### *Decision*

#### Article 136

(1) Where the competent inspector during inspectional supervision establishes that a person against whom the proceedings are conducted has acted contrary to the provisions of this Act and other regulations listed in Article 131 of this Act, he or she shall issue a decision ordering that person to cease with such conduct and to eliminate established irregularities, stipulating in the same time the period within which the irregularities must be eliminated.

(2) Where proceedings from Article 131 of this Act are conducted due to the violation of Articles 107 to 115 of this Act and a person against whom the proceedings are conducted has not yet commenced certain business practice, but the commencement of that business practice

is imminent, the competent inspector shall, if he or she establishes that this business practice is unfair within the meaning of the provisions of Part III of this Act, issue a decision prohibiting the person against whom the proceedings are conducted to use this business practice.

(3) Where proceedings from Article 131 of this Act are conducted due to the violation of Articles 400 to 429 of the Civil Obligations Act, the competent inspector shall issue a decision ordering the person against whom the proceedings are conducted to fulfil its obligation to the consumer only if, based upon the circumstances of the specific case, it is indisputable that the consumer is in the specific case entitled to the rights provided in these provisions.

### *Publication of a decision or a corrective statement*

#### Article 137

Where the competent inspector orders by a decision the cessation of a conduct which is contrary to the provisions of this Act and other regulations, listed in Article 131 of this Act, or if he or she prohibits such conduct, he or she shall order the person against whom the proceedings are conducted to publicise that decision or a corrective statement at its own expense, if the infringement consisted of publication of misleading information.

### *Appeal*

#### Article 138

(1) The person against whom the proceedings are conducted can appeal against the decision referred to in Article 136 of this Act, within eight days of its delivery.

(2) An appeal against the decision referred to in Article 136 of this Act shall defer enforcement.

### *Provisional measures*

#### Article 139

(1) The competent inspector is authorised to provisionally order, pending a final decision, the cessation of a certain conduct that is reasonably suspected to be contrary to the provisions of this Act and other regulations, listed in Article 131 of this Act.

(2) An appeal against the decision referred to in paragraph 1 of this Article will not defer enforcement.

#### Article 140

Initiating or conducting proceedings pursuant to Article 131 of this Act shall not prevent a person to whom the damage was caused by the trader's conduct contrary to the provisions of this Act and other regulations listed in Article 131 of this Act, to initiate before the competent court proceedings for compensation against the person who has caused damage through unpermitted conduct, or to initiate proceedings before the competent court for the nullification or determination of the nullity of the contract concluded under the influence of unpermitted conduct, or to initiate any other proceedings before the court to realise rights based on provisions of this or other laws.

## Voluntary control

### Article 141

(1) Initiating proceedings pursuant to Article 131 of this Act does not exclude the possibility of voluntary control of traders' conduct by certain independent organisations nor the possibility that persons mentioned in Article 132 of this Act initiate appropriate proceedings before these independent organisations against those members of such organisations who act contrary to the provisions of this and other laws listed in Article 131 of this Act.

(2) Where proceedings referred to in Article 131 of this Act is initiated due to the violation of Articles 107 to 115 of this Act, this shall not exclude the possibility of control of unfair business practice by the drafter of a code nor does it exclude the possibility that persons or organisations mentioned in Article 132 of this Act initiate appropriate proceedings before the drafter of a code or before one of its bodies against those traders who act contrary to the code of conduct.

(3) Initiating proceedings from paragraphs 1 and 2 of this Article shall in no way constitute a waiver of the right to initiate proceedings provided by Article 131 of this Act against a certain trader, a group of traders or traders' interest associations.

## Part VI

### INSPECTIONAL SUPERVISION

#### Article 142

Compliance with this Act shall be supervised by the competent inspectors of the ministries and of the State Inspectorate (hereinafter: the inspector) in accordance with authorities established by law.

#### Article 143

(1) In performing inspectional supervision the inspector shall issue a decision provisionally prohibiting the trader to sell the products and provide services until the elimination of established irregularities, where:

- the terms of sale are not indicated clearly, visibly and legibly within the place of sale and the special conditions for certain products are not indicated clearly, visibly and legibly at the places where these products are sold (Article 7, paragraph 2),

- the price of product and service is not indicated as required by Article 9 of this Act,
- the product notification is not indicated on the product or packaging (Article 18, paragraph 1),
  - product notification does not contain all necessary data (Article 17, paragraph 2), or data stated in the product notification are not true, clear, visible and legible and are not written in the Croatian language and Latin script (Article 18, paragraph 2)
  - product offered for sale at a discount, clearance or promotional sale is not furnished with a clear, visible and legible price tag showing the price before and after the discount, clearance or promotional sale reduction (Article 20, paragraph 1),
  - the highest price reduction percentage at the discount or clearance sale does not cover at least one fifth of the value of all products at the outset of the discount, clearance or promotional sale (Article 20, paragraph 2),
  - the product put on sale at a discount, clearance, or promotional sale because its shelf life is about to expire, does not have the shortest shelf life or the 'use by' date clearly, visibly and legibly indicated (Article 21),
  - the trader has not physically separated products offered at a discount, clearance, or promotional sale from other products and has not clearly, visibly and legibly indicated that it is a sale at reduced prices, or a clearance or promotional sale (Article 22, paragraph 1).
  - the trader sells rejects without physically separating them from other products and clearly, visibly and legibly indicating on the product and at the place of sale that it is a sale of rejects (Article 23),
  - sale of public services are not charged according to special regulations (Article 24, paragraph 2).

(2) The competent inspector shall issue a decision prohibiting a business practice deemed unfair within the meaning of Part III of this Act.

(3) The responsible inspector shall issue a decision ordering a trader to eliminate established irregularities by determining a period within which that irregularity must be eliminated, if he or she finds during the inspectional supervision that the trader:

- has not fulfilled the contract concluded with the consumer without a justifiable reason (Article 5, paragraph 1)
- has failed to replace a nonconforming product with a new one or reimburse the consumer for the price paid for that product or charged a lower price for it or, subject to the consumer's consent, eliminate the nonconformity of the product, where being obliged to do so (Article 5, paragraph 2),
  - in case of nonconformity of the service rendered, did not refund the amount paid by the consumer for that service, or reduce the price or eliminate the nonconformity, where being obliged to do so (Article 5, paragraph 3),
  - did not repair a product sold to the consumer with a guarantee in a timely manner or else replaced the product with a correct one (Article 5, paragraph 6),
  - has failed to present the consumer with the documents accompanying the products (Article 13) stipulated by this Act,
  - 
  - did not deliver the product intended for the prize to the consumer (Article 15),



- requires or expressly makes the purchase of the product or the provision of the service conditional upon advance payment in whole or in part and delivers the product or renders the service after receiving such advance payment, and does not to pay interest to the consumer upon delivery of the product or provision of the service at the interest rate granted for three-month time deposits by the trader's commercial bank, if the time of delivery was longer than one month (Article 29),

- has failed to provide prior information according to Articles 32, 43, 44, 57 and 62 of this Act,

- the consumer credit agreement does not contain all data according to Article 74 of this Act,

- has failed to notify the consumer according to Article 77 of this Act,

- advertising is not indicated as required under the provisions of Article 78 of this Act,

- in case of credit repayment before maturity, acts in contravention of the provisions of Article 79 of this Act,

- has failed to notify the consumer as required under the provisions of Articles 85, 86 and 89 of this Act,

- the agreement does not contain data according to Article 90 of this Act.

(4) The responsible inspector shall issue a decision ordering the trader to:

- return to the consumer the amount charged in excess if found that the trader has not observed the prescribed or established prices and the terms of sale (Article 12, paragraph 3),

- return the whole payment increased by interest on arrears, if found that the trader has not returned in due time the whole amount paid by the consumer based on the agreement, increased by interest on arrears as provided in Article 35, paragraph 3, Article 48, paragraph 3 and Article 52, paragraph 3.

(5) An appeal against the decision referred to in paragraphs 3 and 4 of this Article does not defer enforcement.

(6) The decision referred to in paragraphs 1 and 2 of this Article shall not be issued by the inspector if the established irregularities have been eliminated during the inspectional supervision or by the time of the issuance of the decision, which the inspector shall establish and specify in the minutes of performed inspectional supervision.

## Part VII

### PENAL PROVISIONS

#### Article 144

(1) A fine in the amount of HRK 10,000.00 to 100,000.00 shall be imposed on a legal person which:

- without a justifiable reason, fails to fulfil the contract concluded with the consumer or fails to fulfil it in a timely manner (Article 5, paragraph 1),

- at the consumer's request, fails to replace a nonconforming product with a new product or fails to reimburse the consumer the sum paid for that product, or to charge the lower price or, subject to the consumer's consent, to eliminate the nonconformity of the product, where being obliged to do so (Article 5, paragraph 3),

- in case of nonconformity of the service rendered, at the consumer's request, fails to refund the amount paid by the consumer for that service, or to reduce the price, or to eliminate

the nonconformity, where being obliged to do so (Article 5, paragraph 2),

- at the consumer's request, fails to repair a product sold to the consumer with a guarantee within a reasonable period of time or else to replace the product with a correct one (Article 5, paragraph 6),

- without a justifiable reason refuses to conclude with the consumer a contract for the purchase of a product displayed at an outlet or of a service which is the object of its activity (Article 7, paragraph 1),

- fails to indicate the conditions of sale at the place of sale clearly, visibly and legibly, and special conditions of sale for certain products clearly, visibly and legibly at the places where these products are sold (Article 7, paragraph 2),

- for services of repair or maintenance of a product worth more than HRK 500.00, fails to present to the consumer a cost estimate and an itemised work order or to present to the consumer an unsigned work order (Article 7, paragraph 4),

- during the repair, extends the scope of the work order without the consumer's prior written consent by the consumer himself, or by means of distance communication (Article 7, paragraph 5),

- fails to act in accordance with Article 8,

- fails to indicate the selling price of a product and service as required under Article 9 of this Act,

- advertises without stating the price as required under Article 10 of this Act,

- does not enable the consumer to check if the amount charged for products sold or services rendered is correct (Article 12, paragraph 2),

- fails to adhere to the selling price of products or services and to the conditions of sale (Article 12, paragraph 3),

- fails to clearly, visibly and legibly indicate the price of special wrapping paper and use of additional decorations, plus the price of such wrapping service (Article 14, paragraph 2),

- fails to act in accordance with Article 14, paragraph 3 of this Act,

- at the consumer's request, does not retain the packaging of a sold product (Article 14, paragraph 4),

- acts contrary to the provision of Article 16 of this Act,

- fails to furnish the product offered for sale at a discount, clearance, or promotional sale with a clear, visible and legible price tag showing the price before and after the discount, clearance, or promotional sale (Article 20, paragraph 1),

- the highest price reduction percentage of products put on a sale at a discount, clearance, or promotional sale does not cover at least one fifth of all products at the outset of a discount, clearance, or promotional sale (Article 20, paragraph 2),

- product put on sale at a discount, clearance, or promotional sale because of the imminent expiry of shelf life have not their shortest shelf life or the 'use by' date use clearly, visibly and legibly indicated (Article 21),

- sells rejects without physically separating it from other products and without clearly, visibly and legibly indicating on the product or at the place of its sale that it refers to the sale of rejects (Article 23),

- fails to deliver to the consumer, not later than at the moment of contract conclusion, a written information regarding his or her right to terminate a contract concluded away from the trader's business premises (Article 32, paragraph 3),

- fails to increase the reimbursed sum by interest on arrears charged on fixed-term deposits on three months by the merchant bank with which the trader deals, for the entire

period from the receipt of the notification of rescission of the contract to the date of payment (Article 35, paragraph 3),

- charges the use of the means of distance communication contrary to Article 42, paragraph 3 of this Act
  - fails to act pursuant to Article 45 of this Act,
  - charges any costs, interest or penalties to the consumer, contrary to what is provided for in Article 51 of this Act,
  - acts contrary to the provisions of Article 54 of this Act,
  - fails to send prior information to the consumer or fails to send it in good time (Article 57, paragraph 1),
  - prior information does not contain data required under Article 57, paragraph 2 of this Act,
  - acts contrary to the provisions of Article 66, paragraphs 7 and 8 of this Act,
  - fails to inform the consumer in writing before or at the time of concluding the contract about the provisions of Article 77, paragraph 1 of this Act,
  - acts contrary to the provisions of Article 81 of this Act,
  - prevents the consumer from getting access to data required to prove a special relationship between the creditor and the trader (Article 83, paragraph 1).
  - acts contrary to the provisions of Article 86 of this Act,
  - the contract is not drawn up in accordance with Article 87, paragraphs 3 and 4 of this Act
  - fails to provide information to a person requesting it or fails to provide it in accordance with Article 89 of this Act,
  - the contract does not contain data required under Article 90 of this Act,
  - requests payments from a consumer contrary to the provision of Article 95 of this Act,
  - imposes contractual terms which are unfair within the meaning of Article 96 of this Act,
  - uses practice which is unfair within the meaning of the provisions of Part III of this Act.
- (2) For infringements referred to in paragraph 1 of this Article the responsible person in the legal entity shall also be liable to a fine from HRK 10,000.00 to HRK 15,000.00.
- (3) For infringements referred to in paragraph 1 of this Article, a fine in the amount of HRK 5,000.00 to 15,000.00 shall be imposed on the natural person.
- (4) For the infringement referred to in paragraph 1, subparagraphs 1, 5, 7, 8, 10, 12, 13, 16, 18, 20, 21, 22, 24, 27 and 28 of this Article the inspector may impose a fine in the amount of HRK 500.00 on the worker at the place of infringement.

#### Article 145

- (1) A fine in the amount of HRK 15,000.00 to 100,000.00 shall be imposed on a legal person which:
- discloses the consumer's data to any third party, unless authorised in writing by the consumer (Article 7, paragraph 3),
  - fails to acknowledge the payment of invoice in accordance with Article 11 of this Act,
  - fails to issue to the consumer an accurate and clearly, visibly and legibly printed invoice (Article 12, paragraph 1),
  - imposes extra charge for issuance of the invoice (Article 12, paragraph 4),
  - during the sale fails to deliver or present to the consumer the documents referred to in Article 13, paragraph 2 of this Act,

- documents accompanying a product are not printed in accordance with Article 13, paragraph 2 of this Act
- distributes a product packaging of which is harmful to health or not suited to the shape and weight of the product, and is misleading the consumer in respect of the product's weight and size (Article 14, paragraph 1),
- fails to deliver the product intended for the prize to the consumer pursuant to Article 15 of this Act,
- fails to physically separate products on discounted, clearance, or promotional sale from other products , and fails to indicate that it is a discounted, clearance or promotional sale or refuses to inform the consumer of the nature of the fault on the product (Article 22),
- does not charge to the consumer the provision of public services for actual consumption in accordance with Article 24, paragraph 3,
- does not provide the consumer with detailed prior information about the terms of public service contracts and does not make these terms public (Article 24, paragraph 5),
- for decisions concerning the rights and obligations of consumers, fails to set up counselling bodies, among whose members are representatives of consumer protection associations , and if it takes decisions without obtaining the opinion of this counselling body, or fails to take decisions in a transparent, objective and non-discriminatory manner(Article 24, paragraph 6),
- provides a public service without establishing a consumer complaints commission with participation of the representatives of consumer protection associations (Article 24, paragraph 7),
- while providing a public service referred to in Article 24, paragraph 1 of this Act, does not enable the consumer to be connected to the distribution network and to use the connection, network and services under terms and conditions which are non-discriminatory, known beforehand and contractually agreed (Article 25),
- acts contrary to the provisions of Article 26 of this Act,
- fails to maintain the prescribed quality and standards of rendered public service in accordance with trade practices (Article 27),
- requires or expressly makes the purchase of the product or the provision of the service conditional upon advance payment in whole or in part and delivers the product or renders the service after receiving such advance payment, and does not pay interest to the consumer upon the delivery of the product or provision of the service at the interest rate granted for three-month time deposits by the trader's commercial bank, if the time of delivery was longer than one month (Article 29),
- does not have the identification card (Article 30, paragraph 3),
- fails to furnish or furnishes incomplete information to the consumer on the right to rescind the contract (Article 32, paragraphs 1 and 2),
- acts contrary to the provisions of Article 38, paragraphs 2, 3, and 4 of this Act,
- makes use of the means of distance communication with the consumer without the consumer's prior consent (Article 42, paragraph 1),
- before the conclusion of a distance contract by means of distance communication fails to inform the consumer on all the provisions of Article 43, paragraph 1 of this Act,
- if the prior information is not in accordance with the provisions of Article 43, paragraphs 2, 3 and 4 of this Act,
- fails to deliver to the consumer the confirmation of prior information pursuant to Article 44 of this Act,

- fails to reimburse the sums paid within 30 days of the receipt of the notice of rescission from the consumer (Article 48, paragraph 3),
  - fails to increase the refunded sum by interest on arrears charged for the period from the receipt of the written notice of rescission to the actual payment (Article 52, paragraph 3),
  - makes fraudulent use of the consumer's credit or debit card, with which the consumer is paying for the contracted product or service (Article 53),
  - the consumer loan contract has not been concluded in a written form (Article 73),
  - the consumer loan contract does not contain required data (Article 74),
  - fails to inform the consumer as prescribed in Article 77, paragraphs 2 and 3 of this Act,
  - advertising where a trader offers loan contract does not contain a nominal annual interest rate, a statement of any other loan charges, and a statement of the effective annual interest rate (Article 78),
  - prevents the consumer from discharging his or her obligations under a loan credit before the time fixed by the agreement or prevents an equitable reduction in the total cost of the loan (Article 79),
  - fails to act in compliance with Article 85 of this Act,
  - requests payment from the consumer contrary to the provisions of Article 95 of this Act.
- (2) For infringements referred to in paragraph 1 of this Article, a fine in the amount of HRK 10,000.00 to 15,000.00 shall be imposed on the responsible person in the legal person.
- (3) For infringements referred to in paragraph 1 of this Article, a fine in the amount of HRK 5,000.00 to 15,000.00 shall be imposed on the natural person.
- (4) For infringements referred to in paragraph 1, subparagraph 12 of this Article, a fine in the amount of HRK 5,000.00 to 15,000.00 shall be imposed on the responsible person in the local self-government body unit.
- (5) For infringements referred to in paragraph 1, subparagraphs 3, 4, 5, 8, 9, 18, 19, 23 and 26 of this Article, a fine in the amount of a HRK 500.00 shall be imposed by the inspector on the worker at the place of infringement.

#### Article 146

- (1) A fine in the amount of HRK 80,000.00 to 200,000.00 shall be imposed on a legal person which puts on sale a product which does not have product notification or if product notification does not contain all data required under Articles 17 and 18 of this Act.
- (2) For infringements referred to in paragraph 1 of this Article, a fine in the amount of HRK 10,000.00 to 15,000.00 shall be imposed on the responsible person in the legal person.
- (3) For infringements referred to in paragraph 1 of this Article, a fine in the amount of HRK 5,000.00 to 15,000.00 shall be imposed on the natural person.

#### Article 147

The competent inspector referred to in Article 142 of this Act shall refrain from initiating misdemeanour proceedings if the trader eliminates the established irregularities not later than eight days after the performed inspectional supervision and in accordance with the instructions of the responsible inspector as provided for in his or her decision.

Part VIII  
TRANSITIONAL AND FINAL PROVISIONS

Article 148

The Government of the Republic of Croatia shall adopt the regulation referred to in Article 104, paragraph 2 and Article 132, paragraph 2 of this Act within six months of the day of entry into force of this Act.

Article 149

(1) The Government of the Republic of Croatia shall issue a decision on establishing the National Council for Consumer Protection and appoint the chairperson and members of the Council within three months of the day of entry into force of this Act.

(2) On the day of entry into force of the decision referred to in paragraph 1 of this Article, the Decision on the establishment and appointment of the Consumer Protection Council (Official Gazette 58/04 and 154/04) shall cease to have effect.

Article 150

The minister responsible for consumer protection shall adopt the ordinance for which he is competent pursuant to this Article 128, paragraph 3 of this Act within six months of the day of entry into force of this Act.

Article 151

The minister responsible for consumer protection shall issue the decisions for which he is competent pursuant to this Article 75, paragraph 8 of this Act within six months of the day of entry into force of this Act.

Article 152

The Croatian Chamber of Economy and the Croatian Chamber of Trades and Crafts shall align with the provisions of this Act the Ordinance on the Court of Honour of the Croatian Chamber of Economy and the Ordinance on the Court of Honour of the Croatian Chamber of Trades and Crafts within six months of the day of entry into force of this Act.

Article 153

Until the day of entry into force of the provisions of Articles 148 to 151 of this Act, the subordinate legislation adopted on the basis of Article 60, paragraph 8 and Article 102, paragraph 4 of the Consumer Protection Act (Official Gazette 96/03) shall apply.

Article 154

This Act shall supersede the Consumer Protection Act (Official Gazette 96/03) on the day it takes effect.

Entry into force

Article 155

This Act shall enter into force on the eighth day of its publication in Official Gazette, with the exception of Articles 103, 104, 107, 108, 109, 110, 111, 112, 113, 114, 115, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140 and 141 which will enter into force on the day of accession of the Republic of Croatia to the European Union.

Class: 330-01/06-01/03

Zagreb, 13 July 2007

THE CROATIAN PARLIAMENT

The President  
of the Croatian Parliament  
**Vladimir Šeks, m.p.**