

International Comparative Legal Guides



Practical cross-border insights into consumer protection law

Consumer Protection **2022**

Third Edition

Contributing Editors:

Christopher Eberhardt, Danica Barley & Nigel Parr
Ashurst LLP

ICLG.com

Expert Analysis Chapter

- 1** The Role of Consumer Protection and Competition Laws in Addressing Global Sustainability Challenges
Christopher Eberhardt, Danica Barley & Nigel Parr, Ashurst LLP

Q&A Chapters

<p>6 Argentina Pérez Alati, Grondona, Benites & Arntsen (PAGBAM): Luis Diego Barry, María Carolina Abelnabe Vila, María Clara Rodríguez Llanos & Sonia Alejandra Del Regno</p> <p>13 Australia MinterEllison: Miranda Noble & Geoff Carter</p> <p>23 Brazil Pinheiro Neto Advogados: Maximilian Fierro Paschoal, Sasha Nogueira C. S. Roéffero & Rodrigo de Campos Tonizza</p> <p>34 Canada Blake, Cassels & Graydon LLP: Jill Lawrie, Laura Dougan & Emily Hazlett</p> <p>41 China Lehman, Lee & Xu: Jacob Blacklock</p> <p>50 France Ashurst LLP: Christophe Lemaire & Marie Florent</p> <p>63 Germany Ashurst LLP: Dr. Fabian Klein & Dr. Michael Holzhäuser</p> <p>71 Hong Kong Deacons: Paul Kwan & Jasmine Yung</p>	<p>86 Italy Ashurst LLP: Denis Fosselard, Gabriele Accardo & Giulia Carnazza</p> <p>96 Japan Nagashima Ohno & Tsunematsu: Oki Mori & Mai Umezawa</p> <p>107 Nigeria Banwo & Ighodalo: Azeezah Muse-Sadiq & Mavis Abada</p> <p>116 Serbia Gecić Law: Danica Misojčić, Suzana Dončić & Teodora Ristić</p> <p>124 Spain Bojorge & Associates Law Firm: Marla Vanessa Bojorge Zúñiga</p> <p>132 United Kingdom Ashurst LLP: Nigel Parr & Christopher Eberhardt</p> <p>142 USA Wilson Sonsini Goodrich & Rosati: Maneesha Mital, Georgia C. Ravitz, Roger Li & Scott Cohn</p>
---	--

Serbia

Gecić Law



Danica Misočić



Suzana Dončić



Teodora Ristić

1 General

1.1 What legislation, regulations and guidelines are relevant to consumer protection in your jurisdiction?

The Constitution of the Republic of Serbia (“**Serbia**”) determines consumer protection policy in Serbia, while the most relevant act regulating the conduct of traders towards consumers is the Consumer Protection Act (“**CPA**”). Apart from these umbrella regulations, other regulations apply such as the Civil Proceedings Act, the Contracts and Torts Act, the Market Surveillance Act, the Inspection Supervision Act, the Administrative Proceedings Act, the Misdemeanours Act, etc. These laws together define the framework and proceedings applicable to consumer protection, particularly in terms of the exercise of consumers’ rights and effective penalties.

Given that consumer protection policy involves different policies of the state, it includes a wide range of laws and bylaws, namely:

- The Act on General Safety of Product and the Act on Technical Requirements for Products and Conformity Assessment, which regulate security and product compliance matters.
- The Food Safety Act, the Organic Production Act, the Wine Act, the Alcoholic Beverages Act, the Beer Act, the Ethanol Act, the Veterinary Medicine Act, the Sanitary Supervision Act, the Act on the Health Safety Status of Foodstuffs and General Use Items, the Health Care Act, the Health Insurance Act and the Medicines and Medical Devices Act, which regulate food safety matters.
- The Tourism Act, the Advertising Act, the Public Ski Resorts Act and the Associations Act, which are of relevance for tourism services matters.
- The Accreditation Act, the Metrology Act, the Act on Technical Requirements for Products and Conformity Assessment and the Act on Control of Precious Metal Objects, which are relevant for quality of infrastructure matters (accreditation, standardisation, metrology and technical regulations – conformity assessment).
- The Energy Act, which regulates the protection of consumers in relation to the purchase of energy or energy sources matters.
- The Environmental Protection Act and the Waste Management Act, which regulate environmental protection matters.

- The Insurance Act, the Protection of Financial Services Users Act, the Protection of Consumers of Financial Services for Distance Contracts Act, the Financial Leasing Act, the National Bank of Serbia Act, the Banks Act and the Act on Voluntary Pension Funds and Pensions Plans, which are of importance for financial services matters.
- The Protection of Competition Act, which regulates protection of competition matters.

There are also numerous bylaws adopted based on the CPA. Bylaws regulate the conditions and manner of registration of consumer protection associations, out-of-court settlement of consumer disputes, standard, informative and withdrawal forms for timeshares and forms for the withdrawal from distance contracts and off-premises contracts.

The most pertinent bylaws for consumer protection matters are: 1) the Rulebook on the Content and Manner of Keeping Records of Associations and Unions for Protection of Consumers and Conditions for Registration; 2) the Rulebook on the Tasks and Powers of the Regulatory Authority for Out-of-Court Settlement of Consumer Disputes; 3) the Rulebook on the Form and Content of the Template for Withdrawal from Distance Contracts or Contracts Concluded Outside Business Premises; 4) the Decree on the Content of the Form for Withdrawal from the Timeshare Contracts, on Permanent Holiday Reliefs, on Assistance in Resale and on Facilitating Exchange; and 5) the Decree on the Content of the Standard Information Form for the Timeshare Contracts, on Permanent Holiday Reliefs, on Assistance in Resale and on Facilitating Exchanges.

1.2 What is the definition of “consumer” (i.e., who does consumer protection law protect)?

The CPA stipulates that a consumer is a natural person who purchases goods or services on the market for purposes other than their business and other commercial activities.

1.3 Who is/which entities are required to comply with consumer protection law?

The CPA applies to the relations emerging between traders and consumers.

A trader is a legal entity, entrepreneur or natural person acting on the market for purposes relating to their trade or other commercial purposes, or in the name or on behalf of a trader.

1.4 Which agency/agencies is/are responsible for enforcing consumer protection law (i.e., who is the investigator and who is the adjudicator)?

The Ministry of Trade, Tourism and Telecommunications oversees consumer protection and the implementation of the CPA and regulations adopted based on it. The Consumer Protection Sector within the Ministry of Trade, Tourism and Telecommunications is dedicated to matters of consumer protection.

Furthermore, state administration authorities and authorities of autonomous provinces and local self-government units oversee projects and activities aimed at the improvement of consumer rights within their respective territories.

In terms of inspection, Market Inspectors conduct market inspection activities and ensure the compliance of traders with the CPA. Inspections of the other competencies also conduct inspection activities within their scope of competences, which often overlaps with consumer protection.

Consumer protection is also provided by guaranteeing consumers the possibility of 1) submitting complaints against traders to competent bodies offering alternative dispute resolution procedures, and 2) filing a lawsuit against traders before the competent court.

1.5 Are there any specific bodies that regulate/enforce consumer protection law in specific sectors?

Yes, in certain sectors there are special bodies that regulate/enforce the CPA. For example, the Ministry of Agriculture, Forestry and Water Management or the Ministry of Health supervise the conformity with the regulation within their respective competences, which often overlaps with consumer protection. Supervision over the Food Safety Act and bylaws adopted based on this act, is performed by the Ministry of Agriculture, Forestry and Water Management through its Veterinary Inspectors, Phytosanitary Inspectors and Agricultural Inspectors, and on the other side, the Ministry of Health via Sanitary Inspectors.

When it comes to the tourist services, Tourism Inspectors are mainly in charge (also, in specific cases, the Ministry of Youth and Sports oversees the inspection).

2 Protections in Relation to the Quality and Function of Goods and Services

2.1 Please describe any protections regarding the quality and function of goods and services acquired by consumers.

Consumers have several legal protection options regarding the quality and functioning of goods and services they have acquired. In accordance with the CPA, the trader is obliged to deliver the goods and to provide the services in conformity with the concluded agreement with the consumer. This also introduces the application of the Contracts and Torts Act to the trader-consumer relationship as an umbrella regulation; however, the CPA tends to set more consumer-favoured solutions.

Namely, the trader is responsible for the product's material defects. The product conformity is met if: 1) the product fits the description and it has the qualities presented at the model or sample; 2) the product contains the specific qualities required by the consumer if the trader was aware of the consumer's specific

requirements; 3) the product has the qualities expected from products of the same type; and 4) the product has the qualities and functions expected from goods of the same type and that the consumer can reasonably expect from the product given its nature and public promises on the qualities made by the seller, manufacturer or their representatives, particularly if the promise was made in the form of advertisement or on the package.

The above-mentioned rights do not affect the right on demanding the trader to pay the damage due to lack of conformity.

Afterall, consumers may enjoy special rights under the warranty provided by the trader at the time of purchase.

It is quite similar when it comes to services. For informational purposes, the services are considered to not conform to the concluded agreement if: 1) the service does not correspond with the information the trader gave when advertising it; 2) the service contradicts the information the trader gave during the provision of the service, if such information may be deemed to have had an effect on the consumer's decisions; 3) it does not have special characteristics to fit the purpose acquired for, and which was known (or must have been known) to the trader; 4) it does not have the regular characteristics of services of the same type; 5) the service does not correspond to reasonable expectations from it; and 6) the service does not correspond to the description that a third party gave on behalf of the trader before the agreement was signed (regardless of the manner).

2.2 Please outline the substantive tests for these protections.

There are no uniform tests.

2.3 What types of goods and services are covered by the protections relating to the quality of goods and services?

General consumer protection applies to all goods and services. There are special regulations relating to specific types of goods and services (e.g, the food industry, tourism, medical products and financial services, where quality standards are further regulated). Therefore, traders are also obliged to comply with these regulations when selling these types of goods and services to consumers.

2.4 Are there any exceptions to these protections?

In case of second-hand goods, the trader and the consumer may agree on a shorter period in which the trader is liable for the lack of conformity (but not less than a year).

Furthermore, the trader is not liable for the lack of conformity if, at the moment of purchase, the consumer knew (or could not be unaware) of that lack of conformity. Also, the trader will not be liable if the product's material was provided by the consumer.

The trader is not liable for the lack of conformity of the service when the description of it does not correspond to a third-party description if: 1) the trader did not know (or was not obliged to know) that a third party gave the description on their behalf; or 2) if the description was corrected adequately and in a timely manner.

Finally, the consumer may not terminate the contract if the lack of conformity is considered minor.

2.5 What remedies are available for a breach of the protections in relation to the quality and function of goods and services?

In accordance with the CPA, the consumer (buyer) who has duly notified the trader (seller) in a timely manner on the defect of a

product is entitled to: 1) request the removal of the defect or the replacement of the defected product with a new one, without defects (fulfilment of the contract); 2) request a price reduction; or 3) terminate the contract.

Accordingly, when services do not conform to the concluded agreement, the consumer shall be entitled to: 1) demand that the trader provides a service that is in conformity with the contract (fulfilment of the contract); 2) when not feasible/unlawful/would cause the trader a disproportionate burden, the consumer may choose to demand a price reduction; or 3) to have the contract terminated.

2.6 Who has or which agencies have standing to initiate proceedings for a breach?

Consumers may initiate proceedings for out-of-court settlement of consumer disputes before the competent bodies appointed by the Ministry of Trade, Tourism and Telecommunications, subject to a previously unsuccessful declaring complaint or objection to the trader.

Nevertheless, the initiation and conduct of out-of-court settlements of consumer disputes does not exclude or affect the exercise of the right to judicial protection.

The CPA also regulates the possibility to launch a collective interest action conducted before the Ministry of Trade, Tourism and Telecommunications. The collective interest action can be launched by the Ministry of Trade, Tourism and Telecommunications itself or other associations registered for consumer protection against the trader.

The collective interest action is launched if 1) a similar violation of consumer rights by the same trader is detected in the case of at least 10 consumers, and 2) in case of contracting the unfair provisions as defined in the CPA.

The available measures that the Ministry of Trade, Tourism and Telecommunications can render are 1) future and present cessation of acts of violation, 2) removal of the irregularity, and 3) elimination of the unfair clauses in the contracts, without any delays.

Nevertheless, even if the collective interest action is pending, the consumer retains their right to claim for damages from the trader/service provider.

2.7 Describe at least two examples of public or private enforcement of these protections in the last five years, including the conduct/alleged conduct, result and penalties imposed.

The Ministry of Trade, Tourism and Telecommunications ruled in a collective interest action case against one of the telecommunications providers in Serbia. The service provider included an unfair provision in its service agreement, obliging the consumer who terminated the contract to pay the damage in the amount of RSD 60,000 (approx. EUR 510). The Ministry of Trade, Tourism and Telecommunications determined that there had been a violation of the CPA's unfair provisions rules and ordered the service provider to eliminate the unfair provision from the service agreement.

The Ministry of Trade, Tourism and Telecommunications also ruled in a collective interest action case against a rent-a-car company. Here, the rent-a-car company did not clearly display to consumers the provision on the obligation to wash the car before returning it or to pay a contractual penalty. Elimination of the unfair provision was ordered in this instance, as well.

3 Protections/Prohibitions in Relation to the Safety of Goods and Services

3.1 Please describe any protections regarding the safety of goods and services acquired by consumers.

The safety requirements of goods acquired by consumers are regulated in different acts, among which the most pertinent is the Act on General Safety of Products. The Act on General Safety of Products regulates that a product can be made available on the market if it does not pose a risk to the safety and health of persons when used as intended or expected. Furthermore, importers and distributors may only place goods on the market that meet the legal requirements regarding the protection of the health and safety of consumers.

Additionally, there are other regulations related to the health of consumers, such as the Medical Products Act and Food Safety Act.

3.2 Please outline the substantive tests for these protections.

The safety of goods shall be assessed in light of specific regulations that depend on the type of goods.

3.3 What types of goods and services are covered by the protections relating to the safety of goods and services?

In general, all types of goods offered on the market by commercial suppliers are covered by the Act on General Safety of Products, except for products for which special regulations are adopted.

3.4 Are there any exceptions to these protections?

Products that require refurbishing before use (under the condition that the supplier informed the consumer of such fact) as well as antiques are listed as exceptions to these protections.

3.5 What remedies are available for a breach of the protections in relation to the safety of goods and services?

The Act on General Safety of Products prescribes fines of up to RSD 1 million (approx. EUR 8,510) for breaching the act. Moreover, selling goods in violation of the Act on General Safety of Products may be subject to criminal liability as per the Criminal Code, or civil liability if the goods are deemed defective as per the Contracts and Torts Act and the CPA.

3.6 Are there mandatory reporting requirements with respect to the safety of goods or services?

The manufacturer, its authorised representative and the importer are required to immediately inform the competent market surveillance authorities if they know or should have known that a consumer product made available at the market by them presents a risk for health and safety.

3.7 Describe any voluntary or mandatory product safety recall regimes.

The Act on General Safety of Products regulates the mandatory recalls that are exercised by the acting bodies (inspections per their competence, customs, etc.). Recall of the product must be decided on a case-by-case basis.

3.8 List at least two examples of public or private enforcement of these protections in the last five years, including the breach/alleged breach, result and penalties imposed.

The Ministry of Health ordered the recall of dishes (cups, plates and containers) made by famous home textiles retail brand. The reason for the recall was the chemical risk, since the dishes contained excessive levels of plumb and cadmium, considered unhealthy for human use.

The Ministry of Trade, Tourism and Telecommunications ordered the recall of famous Germany manufacturer's cars (specific models produced between January 27, 2017 and October 12, 2021) due to the high risk of fire jeopardising the safety of consumers.

4 Prohibitions Relating to "Conduct" Against Consumers

4.1 Please describe any protections/prohibitions relating to the conduct of persons or businesses (e.g., manufacturers/retailers) which sell or supply goods and services to consumers ("Conduct"). For example, misleading and deceptive conduct, unconscionable conduct, etc.

As already explained in section 1 above, legislation regulating consumer protection is vast. The European consumer policy has a relevant role in the formation of consumer policy in Serbia within the accession process, as an instrument for the introduction and implementation of high levels of consumer protection. Serbia, as the negotiating party for EU membership, is consistent in harmonising its legislation with the legislation and principles of the EU.

In that manner, the CPA provides numerous restrictions against unfair business practices towards consumers. A business practice is unfair if: 1) it is contrary to professional diligence; or 2) it significantly violates or threatens to significantly violate the economic behaviour of the average consumer. Furthermore, misleading and aggressive business practices are also considered unfair and are prohibited. A business practice is misleading if the trader induces or threatens to induce a consumer to make an economic decision that they would not otherwise make. For example, advertising products for features they do not have is misleading and therefore prohibited. A business practice is aggressive if the trader, by harassment, coercion (including physical coercion) or undue influence, violates or threatens to violate the freedom of choice/behaviour of the average consumer, and thus leads or threatens to persuade the consumer to make an economic decision that they would not otherwise make. For example, visiting the consumer in his living space without their prior consent or contrary to their request for the trader to leave is considered aggressive and is prohibited.

Furthermore, a business practice is misleading if a trader fails to take certain actions that result with: 1) denying essential information that the average consumer needs for the appropriate level of information in decision-making; or 2) hiding important

information or providing important information in an untimely, vague, incomprehensible or ambiguous way or if the trader fails to declare their commercial purpose when addressing the consumers, or threatens the average consumers to undertake an economic decision that they would otherwise not take.

Concluding any agreement containing unfair contract terms is also prohibited. Such provisions of the agreement are considered null. An unfair contractual provision is any provision that results in a significant disproportion in the rights and obligations against the consumers.

Finally, placing goods/services on the market that are not safe for use is prohibited.

4.2 Please outline the substantive tests for the above-mentioned protections/prohibitions.

There are no uniform tests.

4.3 Are there any exceptions/exemptions to the protections/prohibitions relating to Conduct?

There are no specific exemptions.

4.4 What remedies are available for a breach of the protections/prohibitions relating to Conduct?

Existing institutional framework for consumer protection provides four methods for resolving consumer disputes.

First, consumers can make direct contact with traders, filing the complaint regarding the Conduct.

Second, the filed complaint results in either the satisfaction of a consumer's needs or not. If the consumer's request is not met, the consumer can reach out to the consumer associations for legal advice, assistance or even mediation.

Third (shortly elaborated in section 2), is the initiation of out-of-court dispute resolution proceedings. In this case, the dispute will be resolved before the competent out-of-court body, listed as such by the Ministry of Trade, Tourism and Telecommunications. This proceeding can be initiated by the consumer solely if they have previously filed a complaint or objection to the trader concerning the breach. The trader is obliged to participate in the proceedings of the out-of-court settlement of consumer disputes conducted before the body. An out-of-court settlement of a consumer dispute may last for a maximum of 90 days, counting from the day it was initiated. The initiation and conduct of out-of-court settlements of consumer disputes do not exclude or affect the exercise of the right to judicial protection. A consumer dispute may also be resolved before arbitration.

Fourth, there is the possibility of initiating a dispute regarding the Conduct before the competent court.

Violations of the CPA trigger penalties up to RSD 2 million (approx. EUR 16,900). In addition, the CPA stipulates the prohibition of performing certain activities, as well as the imposition of protective measures upon the trader.

4.5 List at least two examples of public or private enforcement of the protections relating to Conduct in the last five years, including the breach/alleged breach, result and penalties imposed.

The Ministry of Trade, Tourism and Telecommunications ordered the recall of a famous breadsticks product due to the false claims of extraordinary health benefits of the breadsticks.

Another case from the public enforcement area is a famous mineral water brand, which has been advertised to have heart-friendly properties. The authority's decision prohibited such unfair advertising, and the trader was ordered to eliminate the act of false claims about the products in their advertisements.

5 Other Protections/Prohibitions

5.1 Does consumer law in your jurisdiction have any other prohibitions/protections not covered by the questions above? If so, please describe these prohibitions/protections.

Please see question 2.1.

Furthermore, Serbia passed the Act on Personal Data Protection, applicable to consumer protection matters. This piece of legislation was passed in accordance with the General Data Protection Regulation 2016/679 of the European Parliament and of the Council of April 6, 2016 ("GDPR"). The GDPR provides various provisions concerning customer protection regarding information on the collection and use of personal data.

In addition, one of the most important goals of the Competition Act, besides regulating competition on the market, is protecting consumers. For example, one of the conditions for approving the concentration is the determination of whether or how it will affect the interests of consumers. Considerably, this act contains many provisions whose main goal is consumer protection.

5.2 Please outline the substantive tests for the above-mentioned protections/prohibitions.

There are no uniform tests.

5.3 Are there any exceptions/exemptions?

There are no uniform exceptions/exemptions.

5.4 What remedies are available for a breach of these protections?

Please see question 2.5.

5.5 List at least two examples of public or private enforcement of these protections in the last five years, including the breach/alleged breach, result and penalties imposed.

The Competition Agency declared the existence of restrictive agreements in the case of famous Serbian tech trade company and other tech traders. The Competition Agency detected that the companies involved fixed prices facing Serbian consumers to the highest prices for the tech products in the region. The total penalty paid in this case amounted to approx. EUR 400,000.

In another case, the Competition Agency also declared the existence of restrictive agreements in the case of two transportation companies. The Competition Agency stated that the companies agreed uniform prices for passengers' transport between Belgrade and Valjevo city, thus significantly limiting the competition on the relevant market and exposing the consumers to higher prices. The total fine ruled in this case was in the amount of EUR 1,010,924.

6 Investigation of Potential Breaches

6.1 What powers does/do the consumer authority/authorities in your jurisdiction have to investigate potential breaches of consumer law? Describe the key steps in a typical investigation.

The powers of the competent authorities vary from case to case. For example, the Market Inspector has the authority to: 1) inspect the business premises, i.e. the premises in which the trade activity is performed; 2) inspect financial books, records, documents, electronic documents, as well as other documentation related to the performance of trade, as well as to copy or otherwise take them over; 3) identify persons performing trade activities, by inspecting an identity document or other public document with a photograph; 4) take written and oral statements of persons conducting trade, i.e. witnesses or officials, as well as to invite these persons to give statements on issues of importance for the subject of supervision; and 5) take photographs, make video recordings of the premises in which the supervision is performed, i.e. goods and other objects that are the subject of supervision, etc.

When conducting inspections, the Market Inspector is also authorised to impose the following measures: 1) preventive measures; 2) the elimination of the established illegality; 3) a temporary ban on the trade of certain goods or performance of certain services; 4) the temporary closure of the sales facility; 5) the temporary ban on trade by personal offerings; 6) the temporary ban on conducting long-distance trade; and 7) the seizure of goods.

In addition, both the Ministry of Agriculture, Forestry and Water Management and the Ministry of Health inspectors have special powers with regard to the food industry.

The key steps of investigation are: 1) initiation of the inspection procedure *ex officio* or at the request of a party; 2) delivery of the inspection order to the trader (in most cases); 3) compiling protocol with an order to the trader to eliminate illegality; 4) undertakings by trader; 5) decision-making by the inspector (if the trader did not act on the inspector's order); 6) appeal procedure; and 7) administrative dispute procedure.

6.2 How is an investigation triggered (e.g., *ex officio*, whistleblower or complaint)?

Investigation may be triggered: 1) *ex officio*; 2) by complaints of consumers; 3) by third parties; or 4) by consumer organisations/associations, whose main activity comprises consumer protection.

6.3 Describe any complaints procedure for (i) consumers, and (ii) businesses.

A consumer who was dissatisfied with the trader's response to the complaint or who has another request addressed to a trader may file a so-called consumer report to one of the registered consumer organisations, directly or electronically through the portal of the Ministry of Trade, Tourism and Telecommunications.

The consumer protection organisation gives feedback/assessment of the merits of such request and legal advice on the conditions and manner of exercising rights, and if possible, addresses the trader to meet consumer requests. However, a consumer report is not a formal request by which the proceeding is initiated but rather is a petition containing a specific request for the violation of consumer rights removal. Therefore, the trader has no obligation to take any action in relation to the consumer's report.

On the other hand, the Market Inspector can initiate an investigation if, from the content of the consumer report, it is concludable that the trader caused injury under their supervision. Based on several identical consumer reports, the consumer organisation may initiate a proceeding for the protection of the collective interest of consumers, provided the legal conditions for this are met.

There are no specific complaints procedures for traders.

6.4 What is the timeline for a typical investigation?

There is no general timeline for an investigation as these are always case specific.

6.5 Are there criminal penalties for non-compliance with a consumer law investigation? If so, provide examples where such penalties have been imposed.

There are no criminal penalties for non-compliance with consumer law investigations. The CPA determines misdemeanour fines for non-compliance with a consumer law investigation.

6.6 Can investigations be resolved by way of commitments or undertakings?

Yes. In accordance with the CPA, investigations can be resolved by way of undertakings.

Namely, if the violation of the law is determined, the inspector can instruct the trader to eliminate the determined shortcoming. The inspector may set time limits for the trader to eliminate the shortcomings.

If the inspector determines that the trader has followed through the measure imposed on them and eliminated the illegality, the inspector terminates the inspection procedure by submitting a report to the trader stating that the identified illegalities or deficiencies in their business or conduct have been eliminated.

Otherwise, if the trader does not eliminate the established illegality within the set deadline, the inspector shall without delay issue a decision imposing a measure for eliminating the illegality with an appropriate deadline referred above. In that respect, if the trader does not act in accordance with the decision, the inspector will issue a decision imposing a measure of temporary prohibition of the trade of goods or performing services, etc.

7 Enforcement

7.1 How does/do the consumer authority/authorities seek to enforce consumer law (for example, by administrative decision or by commencing proceedings in court)?

The typical way methods for the enforcement of consumer protection are 1) administrative proceedings, which differ depending on the violation, matter, potential measure, competent authority, etc., and 2) court enforcement proceedings, which follow the administration proceedings and secure the implementation of measures.

7.2 Is/are the consumer protection authority/authorities bound by a time limit to commence proceedings on breaches?

Different time limits are applicable depending on the relevant cases and applicable legislation. As per the CPA, the deadline

to commence the proceeding is two years, except in the cases of collective interest of the consumers, where the time limit is set to three years.

7.3 Describe the enforcement powers/tools available to these bodies (civil, administrative, criminal).

Depending on the imposed measure, the courts or administrative bodies can use different tools such as 1) seizing financial assets from the trader's accounts, 2) banning business activities, 3) ordering the traders to alternate their activities, or 4) launching and conducting criminal cases, etc.

7.4 Where regulators/enforcement bodies have a choice of enforcement tools/powers, what considerations do they take into account in determining which tools/powers to use?

When determining which tools/powers to use, the competent authorities shall choose the effective measure that is the least restrictive for the trader.

7.5 Describe the relevant rules and procedures that must be followed by such bodies (e.g., administrative, judicial).

In case of criminal actions, the courts shall apply the Criminal Proceedings Code. In case of civil actions, the courts shall apply the Civil Proceedings Act. Finally, in case of administrative actions, the competent authorities shall apply the Administrative Proceedings Act and Administrative Disputes Act.

7.6 Is there a right to a stand-alone action and follow on right of action within consumer law? Who has standing to bring these actions?

Consumers may seek protection in stand-alone individual claims before court.

Follow-on actions in consumer law do not explicitly exist in Serbia consumer law; however, the consumers can use the collective interest action's ruling as evidence in their stand-alone actions to claim damage. Explicit follow-on action exists in the competition law which is also applicable for the consumer law. In both cases, the plaintiff (consumer) still needs to prove the inflicted damage.

7.7 Is there a statute of limitations for bringing stand-alone or follow on actions?

Time limitation in stand-alone actions will depend on the particularities of the consumer's claim; for instance, in case of a damage claim, the consumer can file a lawsuit within three years as from when the consumer learnt about the damage, defect and the identity of the trader.

7.8 Describe any international or regional cooperative mechanisms (e.g., MOUs) in which your jurisdiction is involved in the enforcement of consumer protection.

As an EU candidate, Serbia participates in numerous EU projects. For instance, Serbia is a member of the RAPEX system. RAPEX is the system of quick exchange of information

among the EU members and the European Commission on measures and activities undertaken in relation to the health and safety risks generated by products on the market.

8 Appeals

8.1 Describe any appeal processes.

The right to appeal is a constitutional right for all Serbian citizens, thus each administrative or court proceeding provides appealing mechanisms. The CPA stipulates that in the administrative proceedings run by the Ministry of Trade, Tourism and Telecommunications, the interested party is entitled to appeal decisions directly to the Ministry of Trade, Tourism and Telecommunications with a deadline of eight days. After this, the interested party is entitled to launch a lawsuit before the Administrative Court.

In terms of the court proceedings, the interested party can file a lawsuit in accordance with the Civil Proceedings Act.

8.2 Can consumers or retailers/manufacturers appeal decisions made by the consumer authority/authorities or by a court?

The parties who have participated in administrative or judicial proceedings may appeal a decision which affects them. Third parties do not have such right.

8.3 Does an appeal suspend the effect of any penalty/the requirement to pay any fine (if applicable)?

That would depend on the particularity of the proceeding. The general rule for the court proceeding is that the appeal suspends the effect of the penalty. In terms of the CPA and appeals filed under the CPA against administrative decisions, the appeal does not have suspension effects.

9 Current Trends and Anticipated Reforms

9.1 What are the recent enforcement trends in your jurisdiction?

Enforcement trends are mainly directed to the protection of consumers in digital areas and internet trade, particularly trade through social networks, which significantly increased during the COVID-19 pandemic.

There are many issues with administrative proceedings, such as the length of time it takes, making consumer protection law inefficient. Furthermore, out-of-court settlements are not employed enough since there are not enough appointed bodies for it.

9.2 Are there any proposed reforms to consumer law or policy within the next 12 months?

Since the CPA came into effect last year (2021), there are no plans for new reforms in the near future. Additionally, Serbia is a candidate for the membership of the EU, so in the near future, Serbia will probably open the Chapter 28 for EU accession – Consumer and Health Protection, which will trigger changes in Serbian consumer protection law.



Danica Misojčić is a senior associate at Gecić Law, with her main focus on Corporate/M&A, Commercial Law, Banking & Finance and Energy/Infrastructure practice, and she continuously represents clients in complex commercial litigations before courts and institutions in Serbia. Danica concluded her Master's studies at the University of Belgrade, Faculty of Law with an emphasis on International Law, and she earned her LL.M. in International Business Law (2017). During her studies, she took part in numerous study groups and seminars. Danica was awarded a scholarship from the Ministry of Education, Science, and Technological Development of the Republic of Serbia. She is a member of the Bar in Belgrade, Serbia. In addition to her university education, she successfully completed the Leader Project Entrepreneurship Program organised by the Canadian Ivey Business school. Danica is fluent in English, Serbian, Montenegrin, Bosnian and Croatian and has a basic knowledge of Russian.

Gecić Law

Nikole Spasića 2
11000 Belgrade
Serbia

Tel: +381 11 404 35 70

Email: danica.misojcic@geciclaw.com

URL: www.geciclaw.com



Suzana Dončić is an associate at Gecić Law in Belgrade, specialising in Corporate/M&A and Dispute Resolution.

Suzana earned her LL.B. from the University of Belgrade, Faculty of Law, where she is currently pursuing an LL.M. degree in Intellectual Property Law. During her studies, she took part in numerous conferences and seminars, and she also attended a course in rhetoric where she acquired excellent oratory skills.

Suzana was previously an intern at another prominent law office in Belgrade and at the National Alliance for Local Economic Development ("NALED"). Suzana also completed an internship at the State Attorney's Office of the Republic of Serbia.

Suzana is a member of Young ICCA, which connects young professionals engaged in arbitration and dispute resolution.

Suzana has a working knowledge of French and Macedonian and is fluent in Serbian, Montenegrin, Bosnian, Croatian and English, and has a basic knowledge of German.

Gecić Law

Nikole Spasića 2
11000 Belgrade
Serbia

Tel: +381 11 404 35 70

Email: suzana.doncic@geciclaw.com

URL: www.geciclaw.com



Teodora Ristić is an associate at Gecić Law. She earned her LL.B. at the University of Belgrade, Faculty of Law (2020), where she is currently pursuing a Master's degree in International Business Law. During her studies, she completed internships at UniCredit Bank Serbia, Schoenherr and at the Second Basic Court. She participated in the writing and publishing of numerous academic papers and publications. Teodora was also part of a research project in International Tax Law at the Faculty of Law.

Teodora has received numerous awards and recognitions. She was one of the recipients of the Best Students Awards awarded by the Faculty of Law, University of Belgrade as well as the first prize for her paper presented at the Zlatibor Law School. She also received the "Dositeja" scholarship from the Ministry of Youth and Sport of the Republic of Serbia. She is fluent in English, Serbian, Montenegrin, Bosnian and Croatian.

Gecić Law

Nikole Spasića 2
11000 Belgrade
Serbia

Tel: +381 11 404 35 70

Email: teodora.ristic@geciclaw.com

URL: www.geciclaw.com

Gecić Law is the foremost innovative law firm in South-Eastern Europe that redefines the role that a law firm plays in the regional market. We build long-term relationships with clients by delivering a fresh perspective and meaningful solutions. In a constantly changing environment, we resolve the most complex legal challenges, creating opportunities and truly exceptional results for our clients.

Our firm has been consistently recognised by leading global directories, including *The Legal 500*, *Chambers and Partners*, *Benchmark Litigation* and we are the proud winner of The Lawyer European Awards for the Law firm of the year: South Eastern Europe 2021 and Law firm of the year: Eastern Europe and the Balkans 2020.

The firm was founded in 2015 by leading independent legal minds and industry professionals. We nurture a forward-thinking mindset, collaboration

and corporate responsibility, committed to creating a better future for our clients and the communities we are a part of.

Members of our team have diverse backgrounds and international experiences from leading U.S. and European universities.

www.geciclaw.com

GECIĆ | LAW

ICLG.com



Current titles in the ICLG series

- | | |
|--|--|
| Alternative Investment Funds | Franchise |
| Anti-Money Laundering | Gambling |
| Aviation Finance & Leasing | Insurance & Reinsurance |
| Aviation Law | International Arbitration |
| Business Crime | Investor-State Arbitration |
| Cartels & Leniency | Lending & Secured Finance |
| Class & Group Actions | Litigation & Dispute Resolution |
| Competition Litigation | Merger Control |
| Construction & Engineering Law | Mergers & Acquisitions |
| Consumer Protection | Mining Law |
| Copyright | Oil & Gas Regulation |
| Corporate Governance | Patents |
| Corporate Immigration | Pharmaceutical Advertising |
| Corporate Investigations | Private Client |
| Corporate Tax | Private Equity |
| Cybersecurity | Product Liability |
| Data Protection | Project Finance |
| Derivatives | Public Investment Funds |
| Designs | Public Procurement |
| Digital Business | Real Estate |
| Digital Health | Renewable Energy |
| Drug & Medical Device Litigation | Restructuring & Insolvency |
| Employment & Labour Law | Sanctions |
| Enforcement of Foreign Judgments | Securitisation |
| Environment & Climate Change Law | Shipping Law |
| Environmental, Social & Governance Law | Technology Sourcing |
| Family Law | Telecoms, Media & Internet |
| Fintech | Trade Marks |
| Foreign Direct Investment Regimes | Vertical Agreements and Dominant Firms |

The International Comparative Legal Guides are published by:

glg global legal group