

Pursuant to Article 42, paragraph 9 and Article 43, paragraph 8 of the Law on the Protection of Financial Service Consumers (RS Official Gazette, Nos 36/2011 and 139/2014) and Article 15, paragraph 1 of the Law on the National Bank of Serbia (RS Official Gazette, Nos 72/2003, 55/2004, 85/2005 – other law, 44/2010, 76/2012, 106/2012, 14/2015, 40/2015 – CC decision and 44/2018), the Executive Board of the National Bank of Serbia adopts the following

## **DECISION ON HANDLING COMPLAINTS OF FINANCIAL SERVICE CONSUMERS**

### *Introductory provision*

1. This Decision governs the manner in which a financial service consumer (hereinafter: consumer) files a complaint to a financial service provider (hereinafter: service provider) or to the National Bank of Serbia and the manner of complaint handling, as well as other issues pertaining to the procedure of the protection of the rights and interests of the consumers.

2. For the purposes of this Decision, the following definitions shall apply:

1) *consumer* means:

– a natural person using or having used financial services or having approached the service provider with an intention to use these services, more specifically: a natural person using, having used or intending to use financial services for purposes outside his business or other commercial activity, an entrepreneur and a farmer,

– a legal person as a payment services user or electronic money holder within the meaning of the law governing payment services;

2) *service provider* means a bank, financial lessor, payment institution, electronic money institution and the public postal operator in relation to payment services provision and electronic money issue;

3) *means of distance communication* is any means which, without the simultaneous physical presence of the service provider and the consumer, may be used for direct advertising, provision of pre-contractual information, making and/or accepting the offer, negotiating and concluding a contract (e.g. internet, e-mail, mail, telefax and telephone).

Consumer, within the meaning of this Decision, is also the provider of collateral for the service provider's receivables from the consumer referred to in paragraph 1, item 1), indent 1 of this Section based on the use of financial services.

In the event that the complaint refers to the work of the representative of the service provider providing payment services or issuing electronic money – the service provider, within the meaning of this Decision, is the represented payment service provider or electronic money issuer.

### *Complaint procedure of service providers*

3. A consumer may file a complaint about the work of a service provider within three years following the violation of his right or legal interest, in writing – at the service provider's business premises, by post, via the service provider's website or by e-mail.

The service provider shall ensure that the consumer may file a complaint in any of the ways stipulated in paragraph 1 of this Section and may also enable them to file a complaint electronically in another appropriate manner which facilitates the establishment of the date and time of the complaint receipt and its content.

In case of financial services agreed using means of distance communication, the service provider shall enable the consumer to file the complaint in the same manner, that is, by using means of distance communication used for concluding the contract to which the complaint refers.

The service provider providing payment services or issuing electronic money through a representative shall ensure the possibility to file complaints about the work of this representative at the representative's premises.

If a complaint is filed after the expiry of the deadline from paragraph 1 of this Section, the service provider shall immediately notify the consumer that the complaint was filed after the stipulated deadline and that it therefore has no obligation to consider it.

The notification from paragraph 5 of this Section shall not prevent the service provider from considering and/or accepting the consumer's complaint if it considers the complaint founded.

4. The complaint shall contain information on the consumer which unequivocally shows the relation with the service provider to which the complaint refers, as well as the reasons for filing the complaint.

If submitted by a proxy, the complaint shall be accompanied with a special power of attorney whereby the consumer authorises the proxy to file a complaint about the work of a specific service provider in his name and for his

account, to take actions in the complaint procedure, and to access information related to the consumer which is considered a bank secret within the meaning of the law governing banks, and/or a business secret within the meaning of the law governing payment services.

5. The service provider shall visibly display in its premises where the services are offered the information on how complaints are filed and handled and on the possibility and the manner in which complaints should be filed to the National Bank of Serbia.

The service provider shall enable the consumer to access the form for filing a complaint on its website by posting a clear and easy-to-spot link that goes to consumer complaints.

In the part of its website dedicated to consumer complaints the service provider shall also display the information from paragraph 1 of this Section, as well as the e-mail address to which consumer complaints can be filed.

The service provider providing payment services or issuing electronic money through a representative shall ensure that the information from paragraph 1 of this Section is visibly displayed at the business premises of this representative as well.

6. The service provider shall receive complaint in writing at any of the business premises where it offers services to consumers and shall issue a certificate of receipt to the consumer, designating the place and time of the receipt and the person employed by the service provider who received the complaint.

If the consumer intends to make a verbal complaint, the service provider shall warn him that it is under no obligation to consider verbal complaints and shall instruct him on how to file a complaint.

The provisions of paragraphs 1 and 2 of this Section shall also apply to the representative of the service provider through which this provider is providing payment services or issuing electronic money.

Notwithstanding paragraph 2 of this Section, in the event from Section 3, paragraph 3 of this Decision, when the complaint has been filed orally by phone, the service provider shall make a record of this complaint by entering in the appropriate documents information about the consumer, subject matter of the complaint and the date and time of receiving the complaint.

7. If the consumer filed the complaint using the service provider's website, by e-mail or in another appropriate manner in electronic form referred to in Section 3, paragraph 2 of this Decision and in the event from Section 6, paragraph 4 of this Decision, the service provider shall confirm the receipt of the complaint immediately by e-mail or in another appropriate manner.

The receipt certificate from paragraph 1 of this Section shall contain in particular information on the consumer, the substance of the complaint, and the date and time of receipt.

8. The service provider shall consider the complaint and provide the reply in writing in the manner stipulated in Section 9 of this Decision no later than 15 days from receiving the complaint.

Notwithstanding paragraph 1 of this Section, if the service provider is unable to reply within the deadline specified therein for reasons that are beyond its control, the deadline may be extended by maximum 15 days, of which the service provider shall notify the consumer in writing as stipulated in Section 9 of this Decision within 15 days from receiving the complaint.

The notification from paragraph 2 of this Section shall set out the reasons why it is impossible to reply within the deadline from paragraph 1 of this Section and shall state the final deadline for sending the reply.

9. The service provider shall submit the reply to the complaint in writing, by post or in the form of the electronic document, by email or in other appropriate manner in electronic form that ensures that the date and time of receiving the reply and its content can be ascertained – if the consumer submitted the complaint via the service provider's website, by email or in other appropriate manner in electronic form referred to in Section 3, paragraph 2 of this Decision, or if the consumer explicitly agreed to receive the reply in this manner.

The service provider may submit the reply to the complaint by post and in the form of a printed copy of the electronic document (hard-copy of the electronic document) and, after receiving such document, the consumer shall have the right to request the original copy of the electronic document or its certified copy within the meaning of the law governing the electronic document.

The electronic document referred to in paragraphs 1 and 2 of this Section shall contain the qualified electronic signature of the authorised

person of the service provider or the qualified electronic stamp, within the meaning of the law governing the electronic document.

10. The service provider's reply should be complete, clear and understandable to the consumer, should relate to the subject matter of the complaint and contain an assessment of its merit.

If the service provider assesses the complaint to be founded, it shall notify the consumer of whether the reasons for the complaint have been removed, and/or of the deadline for their removal and of the measures that shall be taken to remove them.

In its reply, the service provider shall inform the consumer about his right to file a complaint to the National Bank of Serbia.

11. The service provider shall implement the complaint procedure in accordance with the law governing the protection of financial service consumers (hereinafter: Law), this Decision and its internal acts.

The service provider shall not charge the consumer any fees or any other amount in respect of the costs of complaint handling.

#### *Complaint procedure of the National Bank of Serbia*

12. If the consumer is dissatisfied with the service provider's reply to the complaint or if the reply was not sent within the deadline from Section 8 of this Decision, before initiating court proceedings a consumer may file a complaint to the National Bank of Serbia in writing – by mail or via the National Bank of Serbia's website.

The deadline for filing a complaint to the National Bank of Serbia shall be six months from the date of receipt of the reply from paragraph 1 of this Section or from the expiry of the deadline for sending the reply.

The National Bank of Serbia shall not charge any fees for carrying out the complaint procedure. Any costs incurred by the consumer or service provider in relation to the procedure shall not be decided upon by the National Bank of Serbia; rather, each party shall cover its own costs, regardless of the outcome of the procedure (the costs of photocopying, sending and certifying documents, costs of representation etc.).

13. The complaint shall contain information which enables the identification of the consumer (natural person's name, surname and address

and/or legal person's business name, head office, registration number, and name and surname of legal representative) and the service provider (business name and head office), and the establishment of the relationship between the consumer and service provider, as well as the reasons for the complaint, i.e. the request behind the complaint.

Along with the complaint, the consumer shall submit to the National Bank of Serbia the complaint addressed to the service provider, its reply (if any) and the documents based on which the allegations in the complaint can be assessed.

If submitted by a proxy, in addition to documents from paragraph 2 of this Section, the complaint shall be accompanied with a special power of attorney whereby the consumer authorises the proxy to file a complaint about the work of a specific service provider to the National Bank of Serbia in its name and for its account, to take actions in the complaint procedure, and to access information related to the consumer which is considered a bank secret within the meaning of the law governing banks, and/or a business secret within the meaning of the law governing payment services.

If the complaint is incomplete (it does not contain information and allegations from paragraph 1 of this Section or documents from paragraphs 2 and 3 of this Section or it is incomprehensible), within eight days from the receipt of the complaint the National Bank of Serbia shall invite the consumer in writing to put the complaint in order within a set deadline.

14. The National Bank of Serbia shall not consider a complaint:

- filed before a complaint had been filed to the service provider, that is, before the expiry of the deadline for the service provider's reply to the complaint;
- relating to the complaint filed to the service provider upon the expiry of the deadline from Section 3, paragraph 1 of this Decision;
- filed after the expiry of the deadline from Section 12, paragraph 2 of this Decision;
- filed after the initiation of court proceedings, and/or whose subject matter is the issue of contention in a dispute or such a dispute was ended by a final judgement;
- whose content clearly indicates that the goal was not the protection of rights and interests of the consumer who filed the complaint, and/or if the consumer abused the right to complain, particularly if the complaint is unreasonable, insignificant or offensive;
- containing the same allegations and/or requests as the complaint of the same consumer that was already handled;

- if there is an obvious disproportion between the value of the subject of the complaint and the costs of procedure;
- if such consideration requires presentation of evidence which the National Bank of Serbia may not present in the complaint procedure (court expert analysis, inspection, witness hearing etc.)

In the event from paragraph 1 of this Section, the National Bank of Serbia shall notify the consumer that it shall not consider the allegations made in the complaint and the reasons therefor. If the consumer repeatedly addresses the National Bank of Serbia in the same way, i.e. with the same allegations and/or requests – the National Bank of Serbia shall not send the notification again.

15. Upon receiving a complete complaint, the National Bank of Serbia shall send a letter asking the service provider to comment on the allegations from the complaint.

16. The service provider shall comment on the allegations from the complaint in writing within the deadline set by the National Bank of Serbia in the letter from Section 15 of this Decision which cannot be longer than eight days from the day of the receipt of the letter and shall submit the evidence confirming the assertions from the comment.

Upon the receipt of the comment from paragraph 1 of this Section, and/or upon the expiry of the deadline from that paragraph, the National Bank of Serbia may request additional explanations from the service provider and/or submission of appropriate evidence within the deadline set in its request.

If the service provider fails to make comments within the stipulated deadline, and/or fails to submit the evidence in accordance with paragraphs 1 and 2 of this Section, the National Bank of Serbia may, regardless of further complaint handling, issue a decision imposing a fine on the service provider in accordance with Article 43, paragraph 5 of the Law.

17. In the complaint handling procedure the National Bank of Serbia shall establish whether the service provider observes the provisions of the Law, other regulations governing financial services, general terms of business and good business practices in relation to those services, as well as obligations arising from the contract concluded with the consumer, and in doing so, it shall not be limited by the consumer's request.

Other regulations governing financial services from paragraph 1 of this Section include the law governing contracts and torts and laws governing

financial services in distance contracts, banks, financial leasing, payment services, multilateral interchange fees, foreign exchange operations and other laws the application of which is supervised by the National Bank of Serbia and which govern the rights of consumers, as well as the regulations issued by the National Bank of Serbia on the basis of these laws.

The National Bank of Serbia shall conduct the procedure from paragraph 1 of this Section on the basis of data, information and documents obtained from the consumer and service provider in the course of the procedure.

In the procedure referred to in paragraph 1 of this Section, the National Bank of Serbia shall not present evidence by court expert analysis, inspection, witness hearing etc.

18. The National Bank of Serbia shall inform the consumer of the findings in relation to the complaint no later than three months following the day of its receipt, though this deadline may be extended in more complex cases by maximum three months, of which the National Bank of Serbia shall notify the consumer in writing before the expiry of the three-month deadline from the day of the complaint receipt.

If the findings from paragraph 1 of this Section do not show any irregularities requiring the National Bank of Serbia to issue a decision from Article 45 of the Law, in the notification from that paragraph the National Bank of Serbia shall point out to the consumer the possibility for settling the dispute with the service provider in a mediation procedure implemented in accordance with Article 44 of the Law.

19. If it ascertains that the service provider failed to observe the provisions of the Law, other regulations governing financial services, general terms of business and good business practices in relation to those services or obligations originating from the contract concluded with the consumer, the National Bank of Serbia shall submit the findings in relation to the complaint to the service provider to give a statement thereon.

The service provider referred to in paragraph 1 of this Section shall submit the statement on the findings, signed by at least two executive board members, to the National Bank of Serbia within the deadline determined by the National Bank of Serbia.

If by verifying the claims from the statement referred to in paragraph 2 of this Section it ascertains that they do not change significantly the factual situation established in the findings, the National Bank of Serbia shall issue a decision ordering the service provider to eliminate the established



irregularities and submit to it evidence thereon within the deadline determined in the decision, and/or shall impose a fine in accordance with law.

If by verifying the claims from the statement referred to in paragraph 2 of this Section it ascertains that they significantly change the established factual situation and/or legal qualification established in the findings, the National Bank of Serbia shall supplement the findings.

If, in the concrete case and for the purpose of timely elimination of irregularities, it is necessary to issue such order to the service provider immediately, and/or in a short period of time, or the service provider, if he had acted with due professional care, could have eliminated irregularities during the procedure but failed to do so, and during the complaint procedure the service provider, by receiving the request for statement, was already given the opportunity to give a statement on all facts important for decision-making – the National Bank of Serbia may issue a decision ordering the service provider to eliminate the established irregularities, and/or shall impose a fine, without previously submitting to the service provider the findings in relation to the complaint.

20. The complaint procedure before the National Bank of Serbia ends in one of the following ways:

- withdrawal of the complaint;
- submission of evidence of the removal of irregularities;
- submission of information on the findings from Section 18 of this Decision;
- conclusion of the agreement on dispute settlement through mediation.

Ending of the complaint procedure as set out in paragraph 1 of this Section has no effect on the authorisation of the National Bank of Serbia to issue a decision ordering a service provider to eliminate the established irregularities, and/or to impose a fine in accordance with the law.

#### *Mediation by the National Bank of Serbia*

21. If a consumer who filed a complaint is dissatisfied with the reply or the reply was not sent within the deadline set forth herein, the dispute between the consumer and the service provider may be resolved in an out-of-court settlement – mediation procedure.

22. Mediation is initiated at the proposal of one party in the dispute accepted by the other party.

Mediation proposal is submitted to the National Bank of Serbia in writing, by mail or via the website of the National Bank of Serbia.

The proposal from paragraph 2 of this Section shall contain the deadline for its acceptance which cannot be shorter than five days and longer than 15 days from the day of the delivery of the proposal to the other party in the dispute.

The National Bank of Serbia shall forward the proposal from paragraph 2 of this Section to the other party in the dispute and invite it to declare whether it accepts it within the stipulated deadline, and/or to sign the mediation agreement, if it accepts the proposal.

23. Mediation by the National Bank of Serbia is initiated by concluding the mediation agreement whereby parties in the dispute and the National Bank of Serbia confirm the selection of mediators, govern the rights and obligations in accordance with the mediation principles and govern other issues relevant for mediation.

Once the mediation procedure has been initiated, the consumer may not file a complaint to the National Bank of Serbia, unless the procedure has been suspended or abandoned.

24. If the mediation procedure has been initiated before filing a complaint to the National Bank of Serbia, the deadline referred to in Section 12, paragraph 2 of this Decision shall not run during the mediation procedure.

25. If during the complaint procedure before the National Bank of Serbia a mediation procedure has been initiated, the National Bank of Serbia shall suspend the complaint procedure until the mediation has ended.

26. Mediation may end by the agreement of the parties, suspension or abandonment.

The agreement reached in the mediation procedure by the National Bank of Serbia shall be made in writing. The agreement shall have the power of an enforceable document if it contains a statement of the debtor on acceptance of enforcement following maturity of a certain liability or fulfilment of a certain condition (enforceability clause), signatures of the parties and mediator, and the National Bank of Serbia's confirmation of enforceability, without certification by a court or public notary.

Each party may decide to withdraw from the mediation procedure at any stage of the procedure.

The National Bank of Serbia may suspend the mediation procedure if it assesses that further implementation of the procedure is not purposeful and if during the procedure it learns that the service provider committed an irregularity for which it may be sanctioned and/or fined in accordance with the law.

27. Mediation procedure is confidential and urgent.

The National Bank of Serbia shall not charge any fees for carrying out the mediation procedure. Any costs incurred by the consumer or service provider in relation to the procedure shall not be decided upon by the National Bank of Serbia; rather, each party shall cover its own costs, regardless of the outcome of the procedure (the costs of travel, accommodation, representation, unpaid leave etc.).

In case the mediator estimates there is a need and if technical conditions of parties to the dispute have been fulfilled, a remote mediation procedure may be conducted, via appropriate means of electronic communication.

The mediator may conduct joint or separate talks with parties to the dispute, and may inform one party of the proposals and views of the other party, with the latter party's consent.

28. Initiation and implementation of the mediation procedure between the consumer and service provider shall not exclude or affect the exercise of the right to court protection in accordance with the law.

*Electronic communication of the National Bank of Serbia with the service provider and consumer*

29. In the procedures stipulated by this Decision, the exchange of requests, comments, findings, notifications and other papers and documents between the National Bank of Serbia and service provider and/or between the National Bank of Serbia and consumer may be done electronically.

If a consumer submits the complaint via the National Bank of Serbia's website, the National Bank of Serbia shall submit notifications and other papers and documents in the complaint procedure to such consumer electronically.

If a consumer submits the complaint by post, the National Bank of Serbia may submit notifications and other papers and documents in the complaint procedure to such consumer by post in the form of a printed copy of the electronic document (a hard-copy of the electronic document) and, after receiving such document, the consumer shall have the right to request the original copy of the electronic document or its certified copy within the meaning of the law governing the electronic document.

In the event from paragraph 1 of this Section, the service provider shall submit a document in the form of an electronic document to the e-mail address of the National Bank of Serbia designated on its website, by e-mail or in another electronic manner as determined by the National Bank of Serbia.

In the event referred to in paragraphs 1 and 2 of this Section, the National Bank of Serbia shall submit an electronic document to the service provider and/or consumer using the e-mail address they designated for the receipt of electronic documents, by e-mail or in another electronic manner as determined by the National Bank of Serbia.

The electronic document referred to in paragraphs 4 and 5 of this Section shall be signed using the qualified electronic signature or qualified electronic stamp within the meaning of the law governing electronic signature.

The documents and/or evidence submitted by the service provider to the National Bank of Serbia in accordance with paragraph 1 of this Section shall be original copies (if the document was originally prepared in electronic form) or copies of the original (by digitalisation of the document which was not in electronic form originally).

The National Bank of Serbia and service provider shall confirm the receipt of each document referred to in this Section immediately upon receipt, by sending the receipt certificate to the e-mail address from which the document was sent, by e-mail or in another electronic manner as determined by the National Bank of Serbia.

### *Information provision*

30. The National Bank of Serbia publishes on its website quarterly information on received complaints and service providers which were found not to have acted in accordance with the Law, the law governing payment services or other law related to the protection of consumers.

31. A service provider shall keep records of all complaints and information necessary for compiling the report from Section 32 of this Decision.

32. A service provider shall compile a quarterly report with information on the total number of complaints received in the reporting period, on the number of complaints by type of financial services (loans, deposits, credit and debit cards, payment accounts, overdraft facility, financial lease services, electronic money issuance, other), by type of complaint (e.g. credit bureau, fees, collateral, interest rates, information), by type of contract, i.e. manner of providing services (e-banking, m-banking, without the use of distance communication means), on the number of consumers (total number of consumers, number of consumers by consumer category, on the number of consumers by type of financial service – without collateral providers), on the total number of complaints handled in the reporting period and the number complaints granted in favour of consumers.

The service provider shall deliver the report from paragraph 1 of this Section to the National Bank of Serbia electronically in accordance with the guidelines governing electronic submission of data to the National Bank of Serbia no later than 15 days following the end of the quarter.

*Separate obligations of a bank in relation to complaints*

32a. A bank shall regulate in more detail, by its internal act, the procedure of submitting complaints and deciding thereon in line with the provisions of the Law and this Decision.

The executive board member in charge of managing complaints and bank risks in relation to complaints, and persons in the bank authorised to act upon complaints shall be determined by the act referred to in paragraph 1 of this Section.

A bank shall submit to the National Bank of Serbia the act referred to in paragraph 1 of this Section, and its amendments and/or supplements within eight days from the day of adopting the act and/or its amendments and/or supplements.

32b. Compliance with the act referred to in Section 32a of this Decision shall be verified and analysed, at least once a year, by the bank's organisational unit whose scope includes internal audit activities (hereinafter: internal audit).

After the verification and analysis referred to in paragraph 1 of this Section are completed, the internal audit shall compile a report, which shall contain at least the description of the audit subject with significant

findings, ascertained irregularities, nominated responsible persons, and the proposal of measures and recommendations to eliminate the irregularities, and the deadlines for implementation.

The report referred to in paragraph 2 of this Section shall be submitted to the bank's executive board.

32c. A bank shall monitor and supervise the application of the act referred to in Section 32a of this Decision, analyse the internal audit report referred to in Section 32b of this Decision, and undertake measures to eliminate the irregularities determined in its operation.

The bank's executive board shall:

- analyse the causes of individual complaints and identify the main cause that is common for a larger number of complaints, if the cause can be determined;
- determine whether these are systemic irregularities and their causes;
- consider whether the established causes, and/or irregularities may affect other business processes and products, including those that the complaint does not directly relate to;
- undertake relevant measures to eliminate, and/or limit and prevent the occurrence of the causes of the complaint, and/or systemic irregularities;
- undertake relevant measures to eliminate material consequences of systemic irregularities among consumers affected by systemic irregularities.

#### *Transitional and final provisions*

33. The service provider shall enable the consumer to file complaints as set out in Section 3, paragraph 3 within six months from the date of the entry into force of this Decision.

The service provider shall enable the consumer to file complaints as set out in Section 5, paragraph 2 of this Decision within three months from the date of the entry into force of this Decision.

The service provider shall ensure that the receipt certificate contains data from Section 7, paragraph 2 of this Decision within six months from the date of the entry into force of this Decision.

34. The service provider shall compile the first report from Section 32 of this Decision for the second quarter of 2019 and deliver it to the National Bank of Serbia no later than 15 July 2019.

The service provider shall compile the report for the first quarter of 2019 and deliver it to the National Bank of Serbia in accordance with the Decision Specifying the Manner of Handling Financial Services Consumer Complaints by Financial Services Providers and the National Bank of Serbia (RS Official Gazette, No 25/2015).

35. The procedures of handling consumer complaints and mediation procedures initiated before the date of the entry into force of this Decision shall end in line with the provisions of the regulations that were in effect on that day.

36. This Decision repeals the Decision Specifying the Manner of Handling Financial Services Consumer Complaints by Financial Services Providers and the National Bank of Serbia (RS Official Gazette, No 25/2015).

37. This Decision is published in the RS Official Gazette and enters into force on 11 February 2019.

NBS Executive Board No 2  
10 January 2019  
Belgrade

Chairperson  
of the NBS Executive Board  
Governor  
of the National Bank of Serbia

Dr Jorgovanka Tabaković