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CONSUMER PROTECTION ACT

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CONSUMER PROTECTION ACT

CHAPTER I

GENERAL PROVISIONS

Purpose and Content of the Act

Article 1

(1) This Act regulates the protection of the basic rights of consumers in purchasing goods and services, and in participating 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 of life, health and property,
3. the right to efficient legal protection of consumers,
4. the right to informing and educating the consumers;
5. the right to establishing the consumers' associations aimed at protection of their interests, the right to representation and participation in the activities of the bodies dealing with issues of interest for the consumers.

(2) This Act stipulates the passing of the National Programme on Consumer Protection as well as the competent bodies for the protection of consumers' rights and interests.

(3) The rights of consumers may be exceptionally limited by law in order to protect the interests and safety of the Republic of Croatia, nature, environment and health without putting consumers in a disadvantageous position.

Relation to other Acts

Article 2

(1) The implementation of provisions of this Act shall not have any effect on the rights the consumers have on the basis of other Acts.

(2) The provisions of the general regulation on obligatory legal relations shall be subordinately applied to the obligatory legal relations.

Definitions

Article 3

For the purpose of this Act, the following expressions shall have the following meanings:

Consumer shall mean any natural person concluding a legal transaction for purposes that are not related to his or her business or entrepreneurial activity.

Trader shall mean any person who offers or concludes legal transactions i.e. acts in the market, within the frameworks of his/her profession of business activity.

For the purposes of Title 6, Part 2 of this Act, the trader is considered to be also a person that acts on his behalf or for his account.

Choice of Foreign Law

Article 4

The consumer shall have the right to protection on the basis of this Act, regardless of the fact that the foreign applicable law has been chosen by the contract.

Trader's Obligation

Article 5

Trader shall be obliged to fulfil the contract in accordance with its provisions and the regulations of the obligation Act.

Article 6

If a trader or producer issues a guarantee for the product or service, he/she shall abide to legal obligations and obligations taken under the guarantee.

CHAPTER II

SALE OF PRODUCTS AND PROVISION OF SERVICES

TITLE 1

GENERAL PROVISIONS ON RETAIL SALES

Conditions of the Sale of Products and Provision of Services

Article 7

- (1) If the exhibition of products at the point of sale, in accordance with general rules of the act of obligations, is not considered to be an offer, a trader may refuse to conclude a sales contract concerning a product displayed at the place of sale in the selling point only for fully justified reasons. A trader may refuse to provide a service that is a subject of his trade only for fully justifiable reasons.
- (2) A trader must expose the conditions for sale clearly, visibly and legibly at the point of sale. Special conditions that a trader offers for certain products shall be clearly, visibly and legibly stated in the premises where these products are being sold. If a trader offers special conditions to particular groups of consumers (pregnant women, newlyweds, disabled persons, pensioners, etc.), these conditions shall be clearly and visibly stated in the selling point.
- (3) The trader shall not be allowed to disclose personal information on the consumer to a third party, or to any party working within the trader's group of companies (concern), without prior explicit and written consent of the consumer.

- (4) For the services of repair or maintenance of products whose value exceeds 500 HRK, the trader shall supply the consumer with a written estimate and work order containing the description of works, as well as material and parts used for repair. The work order shall be signed both by the trader and consumer, and one copy of the work order shall be given to the consumer.
- (5) If, in the situations described in the previous paragraph, a need for additional works and building-in of additional parts arises in the course of repair (expansion of work order), the trader has to obtain consumer's prior written consent if the price is increased for more than 5% by expanding of work order.

Stating the Price of Products and Provision of Services

Article 8

- (1) The trader shall clearly, visibly and legibly state the retail price of products, services he/she provides and spare parts he/she sells with the service, and mark the price is in HRK.
- (2) The retail price of a product or service, a retail price of a product unit, manufacturing unit or a certain quantity of product shall be the final price for the consumer.
- (3) A unit price is a price per one kilogram, one litre, one meter, one square meter or one cubic meter of a product, or some other quantity measure that is generally of usually used in the sale of products.
- (4) Besides the retail price, in the case of pre-packed products in the consumer packaging, the unit measure for such a product shall be clearly, visibly and legibly stated if the package unit and unit of measure of the product are different.
- (5) For bulk products, only the unit price of the product shall be stated at the selling point.
- (6) The price for unit of measure does not need to be stated for pre-packed products if it equal to the retail price of the product, as well as for those products in the case of which it would be pointless of could cause confusion taking into consideration the characteristics of the product.
- (7) If other regulations stipulate stating of the information on net weight, it shall be sufficient for pre-packed products to state the price for the net unit of measurement.
- (8) The retail price shall be stated on the product or packaging, as well as at the product selling point and on the product displayed in the shop window. No other price besides those referred to in paragraph 2 of this Article shall be stated on the product, except in the case of a sale at a reduced price. The price for unit of measure of the pre-packed product shall be stated at the product selling point.
- (9) Provision of the paragraph 8 of this Article shall not be applied to public auctions and sales of works of art and antiquities, as well as to the prices of services stipulated by other regulations.

Exemptions

Article 9

The provision in Article 9 paragraph 4 on stating the price for the product's unit of measure shall not be applied to small trading companies, craftsmen and individual traders with up to five employees.

Stating the Price in Advertising

Article 10

Each advertisement mentioning the retail price of the product shall also contain the price as defined by Article 8 paragraph 1 of this Act.

Settlement of Obligations

Article 11

Contrary to general provisions on contractual relations, the capital commitment of the consumer paid via post office, bank or some other money transfer institution shall be considered to be settled on the day when the institution receives the consumer's order of transfer.

Invoice

Article 12

- (1) A trader shall present the consumer with a correct, clearly, visibly and legibly written invoice for the product sold or service provided.
- (2) A trader must enable the consumer to check the correctness of the charged amount in comparison to the quality and quantity of the product bought i.e. service provided.
- (3) A trader must adhere to the stated retail price and conditions of sale.
- (4) It shall not be allowed to impose an additional charge for issuing of an invoice.

Product With a Defect or Fault

Article 13

If the trader sells a product with a defect or fault, this product shall be physically separated from other products and the defect or fault shall be clearly, visibly and legibly marked on the product and at the selling point.

Documents Enclosed with the Product

Article 14

- (1) When selling a product, the trader shall deliver, or, in case of bulk agricultural products, present the consumer with all the obligatory documents, or documents prepared by the

manufacturer for easier and safer use of the product (declaration, warranty, technical instructions, assembly instructions, instruction for use, list of authorised services etc.)

- (2) The documents referred to in paragraph 1 of this Article shall be written clearly, visibly and legibly in the Croatian language and Latin script, which does not exclude the possibility of parallel use of other languages and scripts that may be understood by the buyer.

Packaging

Article 15

- (1) The packaging shall be safe for health, adjusted to the form and weight of the product, and shall not deceive the consumer in terms of weight and size of the product.
- (2) In the case where wrapping with special wrapping paper and additional decorations is offered, the price of these products and services shall be stated clearly, visibly and legibly.
- (3) The packaging in the shape of a bag with a logo and /or name of the producer or trader shall be considered to be a means of promotion. Such packaging shall not be charged by the trader.
- (4) Upon the consumer's request, the trader must keep the packaging of the sold product.

Promise of a Benefit

Article 16

A trader who promises the consumer a benefit in the form of a prize when offering a product or service, or makes similar statements suggesting the consumer that he/she has won a prize, shall be obliged to deliver such a prize to the consumer without any delay, even if the consumer does not buy the offered product or service.

TITLE II

DECLARATIONS OF PRODUCTS

Article 17

- (1) A declaration shall be obligatory for each product and it shall contain at least the following information:

- brand name of the product, the name under which it is sold;
- type and model of the product, as well as the stated measure of the product if this is an important feature of the product;
- production date and shelf-life of a product, if provided for by law
- name and head office (full address) of the manufacturer; and in the case of imported products the name and the head office of the importer and the country of origin;
- warning of potential hazards in the course of utilisation, if such hazards exist;
- manufacturer's statement on the existence of modified features of products and organisms, ingredients, parts and additives, and in case when such transformed characteristics exist, on the type of modifications;
- manufacturer's statement on the conformity of the product with the prescribed conditions, if such conditions exist.

- (2) Besides the information listed in the previous paragraph, a declaration must also contain the information determined by special legislation.
- (3) All the information in the declaration shall be truthful, clear, visible and legible, as well as written in the Croatian language and Latin script, which does not exclude the possibility of parallel use of other languages and signs easily understandable to the buyer. The importer shall be liable for the information stated in the declaration on imported products.
- (4) The brand name of a product under which the product is sold shall mean the designation or the description of the product and – if necessary – of its utilisation, which should be accurate enough to enable the buyer to recognise a desired product and to distinguish it from other similar products with which it might be confused.
- (5) A more detailed content of a declaration and other conditions for individual products or groups of products shall be prescribed by the minister in charge of trade in accordance with the special legislation.
- (6) The full address referred to paragraph 1, item 4 of this Article shall contain the town, street and street number, a telephone and fax number, as well as an e-mail address if it exists.

Bulk and pre-packed products

Article 18

- (1) Products in bulk are those products offered for sale without being previously packed and measured in the presence of the consumer.
- (2) Pre-packed product is an entity for sale consisting of a product and packaging and which is, without any further processing, delivered to the ultimate consumer.
- (3) The declaration for the products in bulk must be stated clearly, visibly and legibly on the packaging in which the product is put for sale, or in the selling point if the product is not kept in a separate packaging.

TITLE III

PROVISIONS ON SALES AT A REDUCED PRICE

Marking the sale at a reduced price

Article 19

- (1) The price of a product before and after a price reduction shall be clearly, visibly and legibly stated on the product offered for sale at a reduced price.
- (2) If the percentage of the price reduction is stated in a range, the highest percentage of the price reduction at the beginning of the sale must be equal to at least one fifth of all the products offered for sale at a reduced price.

- (3) The provisions of Article 9, paragraph 8 of this Act shall be applied as appropriate to the prices of products on a sale at a reduced price.

Article 20

A product which is offered for sale at a reduced price because of its imminent date of expiry shall, in addition, have a clear, visible and legible designation of its shortest or final date of expiry.

Physical separation of products on sale

Article 21

- (1) A trader shall physically separate the products for sale at reduced price from those that are not offered for sale, and clearly, visibly and legibly announce a sale at reduced prices.
- (2) If a trader offers a faulty product for sale at a reduced price, he/she shall inform the buyer of the nature of the fault on the product.

TITLE IV

PUBLIC SERVICES PROVIDED TO CONSUMERS

Article 22

- (1) Within the meaning of this Act, the sale of electric power to consumers, gas from distribution network, thermal energy, public telecommunications services, postal services, transport of passengers in public city and commuter traffic, provision of fresh water and sewage management and cleaning, shall be considered as public services.
- (2) The sale of public services to consumers, when the nature of the service allows it, must be calculated on the basis of consumption in an accounting period.
- (3) A trader must enable the consumer to become familiar in advance with all the conditions for the use of public services and publicly announce those conditions.
- (4) The bodies that decide on the rights of consumers must, on the basis of special legislation, establish advisory bodies in which the representatives of the consumers shall also be included and make those decisions on the basis of the opinion from the advisory body in a transparent, objective and non-discriminatory manner.
- (5) A trader providing a public service shall establish a complaints commission that must include representatives from consumer protection associations. The commission shall respond in writing to the consumers' complaints.

Connection to a Distribution Network

Article 23

A trader shall provide a connection to his distribution network for all consumers, as well as the use of the connection, network and services under non-discriminatory and accepted conditions that are known in advance.

Maintenance of Standard and Quality of Providing Energy and Water Services

Article 24

A trader shall be obliged to adhere to prescribed quality standards for a public service that he provides in accordance with special provisions.

Article 25

The trader, i.e a provider of service must, for the usage of service of connection and/or access to public telecommunications network, conclude with a consumer, in writing, a contract. The contract must contain at least the following:

- name and address of service provider,
- provided services, the level of quality of provided service, and the time for the establishment of the connection
- offered maintenance services
- prices and tariffs of agreed services
- period of validity of the agreement and conditions for renewal or termination of contract
- compensation or way of remuneration, if the agreed quality of service has not been met
- way of dealing with disputes

Article 26

(1) Trader, that is a provider of a telecommunications service, must, at a consumers request, provide him with free restriction of certain outgoing calls, that is restrict calls to certain types of numbers.

(2) A trader, that is a provider of a telecommunications service, must enable the consumers to pay for access to public telephone network and to use public voice services in advance.

Article 27

In order to avoid conflicts with the consumer, the trader, that is the provider of a public voice service, must enable the consumer to control and monitor the costs that occurred by the usage of a public voice service in a fixed telecommunications network.

TITLE V

ADVANCE PAYMENT

Interest on Advance Payments

Article 28

- (1) If a trader demands or expressly conditions the buying of a product or a service by a partial or total advance payment or by advance payment in instalments, and if he/she delivers the product or provides a service upon receiving the advance payment, he/she shall, upon delivery of the product or after the provision of a service, calculate and pay to the consumer the interest by the interest rate for three-month tied deposits in the trader's commercial bank for the whole period following the advance payment, calculated as of the date of the delivery of the product, if the delivery time of the product or service exceeds one month.
- (2) Provision from paragraph (1) above shall be applied also in the case when the trader is not able to deliver the contracted product or service.

TITLE VI

SALES CONTRACTS CONCLUDED OUTSIDE THE TRADER'S BUSINESS PREMISES

Scope

Article 29

- (1) The provisions of this Title shall apply to contracts concluded during excursions organised by the trader outside his/her business premises, during the trader's visit to a consumer's home, or to a consumer's workplace, if such visit was not made upon the explicit wish of a consumer.
- (2) The provisions of this Title shall not apply to contracts concluded in the course of trader's visit to a consumer, if the visit was made upon the explicit request of the consumer, unless the consumer was not aware or was not supposed to be aware of the fact that the products of services offered by the trader did not represent his commercial or professional activity.
- (3) A trader who concludes a contract described in paragraph 1 of this Article must produce his/her identification documents to the consumer.

Contracts Excluded from the Scope of this Title

Article 30

- (1) The provisions of this Title shall not apply to contracts:
 - on construction concluded for the construction of a particular real estate;
 - on sale, rent, lease and other rights concerning real estate;

- on periodical delivery of food products, drinks, or other products intended for daily use in a household, which are delivered at regular intervals by mobile retail sales;
 - concluded on the basis of trader's catalogue, if the consumer had the opportunity to read it without the trader's presence or the presence of trader's representative, and if the consumer was informed in the catalogue and the contract of his right to terminate the contract referred to in Article 32 of this Act;
 - on insurance
 - on the sale of securities.
- (2) The provisions of this Title shall apply to all contracts on the sale of products intended for installation into a real estate, as well as to the contracts on construction whose purpose is repair or reconstruct a real estate.

The Information on the Right to Terminate a Contract

Article 31

- (1) When concluding a contract referred to in the present Title, a trader shall give a consumer written information on his right to terminate the contract referred to in Article 33 of this Act.
- (2) The information shall contain the name i.e. company name of the trader, his full address, date of sending the information, information necessary for the identification of contract, especially indication of the contracting parties and the subject of the contract and its value, as well as the time limit for the termination of the contract referred to in Article 32, paragraph 1 of this Act.
- (3) The information shall be delivered to the consumer not later than at the moment of concluding the contract.
- (4) In case of a dispute, a trader is obliged to prove that he delivered the information specified in this Article to the consumer in due time.

Termination of Contract

Article 32

- (1) A consumer has the right to terminate the contract referred to in this Title without stating any reason for doing so within the period of 8 working days after receiving the written information referred to in Article 31 of this Act:
- (2) A contract shall be terminated by written notification on termination.
- (3) A contract shall be terminated when the trader receives the notification of termination.
- (4) The contract shall be considered to be terminated in due time if the notification on termination was sent within the time limit specified in paragraph 1 of this Article.

Termination of a Contract when the Notification on Termination was not Issued

Article 33

If a consumer does not receive the written notification referred to in Article 31 of this Act, there is no time limit for the termination of the contract defined in the previous Article.

The consequences of contract termination

Article 34

- (1) In the case of contract termination, a consumer shall return the product to the trader at his own expense.
- (2) A consumer shall not be deemed responsible for the damages suffered by the trader for the reasons of contract termination.
- (3) A trader is required to refund the consumer the total amount paid up to that moment in accordance with the contract, no later than 30 days from receipt of the written notification on termination.

TITLE VII

DISTANCE CONTRACTS

The definition of distance contracts

Article 35

A distance contract is a contract concluded between a trader and a consumer as part of an organised sale of products or provision of services organised by the trader who, at the time of the conclusion of the contract, uses one or more means of distance communication with the view of concluding such a contract.

Means of distance communication

Article 36

- (1) "Means of distance communication" mean those means appropriate for concluding a contract between a trader and a consumer, so that the trader and the consumer are not required to be both physically present at the same place.
- (2) Means from paragraph 1 of this Article include among others: addressed or non-addressed printed materials, standard letters, printed advertisements with an order form, a catalogue, a telephone with or without human intervention, a radio, a videophone, a videotext, facsimile, television, electronic mail.

Operator of the means of distance communication

Article 37

An operator of the means of distance communication shall be any person whose job, profession or activity includes and enables the consumer to use one or more means of distance communication.

Scope of the title

Article 38

The provisions of this Title shall not apply to:

- contracts concluded by purchase on vending machines
- contracts concluded with a telecommunications operator on utilisation of public pay phones;
- construction contracts;
- contracts whose purpose is to acquire rights related to real estate, except to contract on rent or lease of real estate;
- contracts concluded by an auction.

Exclusion of some of the provisions of this Title

Article 39

(1) The provisions of Articles 43 – 51, paragraph 1 of this Act shall not apply to:

- contracts on continuous delivery of foodstuffs, drinks and other products intended for daily use in a household or at a consumer's workplace;
- contracts on provision of tourist services whereby the trader commits to provide such a service on a precisely defined date or within a defined time frame.

(2) In the case of contracts on the provision of entertainment services in the open air, a trader may, in accordance with the contract, exclude the application of the provisions under Article 52, paragraph 2 in certain situations defined by the contract.

Prohibition to conclude certain contracts through the means of distance communication

Article 40

It shall not be allowed to conclude the contract on the sale of drugs and medical and veterinarian products by means of distance communication.

Limiting the use of means of distance communication

Article 41

- (1) The use of telephones without human intervention (automatic announcement machines) and facsimiles with the purpose of concluding a contract shall be allowed only with the prior consent of the consumer.
- (2) The use of other means of distance communication with the purpose of concluding a contract shall be allowed if the consumer does not explicitly object.

Prior notification

Article 42

- (1) Within an appropriate period of time before concluding a contract, a consumer must be informed of the following:
 - name, company, identification number and full address of the trader or a person to whom the consumer may refer his complaints;
 - product or service offered, and their name;
 - the main characteristics of the product or service;
 - the price of a product or a service, including all taxes and other charges;
 - the means of payment, as well as the means and time of the delivery of the product or the provision of the service;
 - after-sales services (servicing and selling of spare parts)
 - warranties given for a product or a service;
 - consumer's right to terminate the contract under Article 45 of this Act as well as on the deadline for contract termination;
 - situations in which the consumer's right to terminate a contract is excluded;
 - conditions and procedures on the termination of a contract concluded for an indefinite period of time or for a period of time longer than a year;
 - the costs of using the means of distance communication, when this cost is not charged by the standard tariff;
 - the period of time during which the offer or the price is valid;
 - in the case of contracts on continuous supply of goods or contracts on continuous supply of services, the consumer must be informed of the minimum period of time to which the trader agrees to conclude the contract.

- (2) The information referred to in paragraph 1 of this Article shall have a clearly stated commercial intention of the trader, shall be unambiguous, clear and intelligible, adapted to the means of distance communication being used.
- (3) In the case of using the telephone, the trader's identity as well as the commercial purpose of the call must be explicitly mentioned at the beginning of conversation.
- (4) The information must contain the warning that the contract for and on behalf of a minor or a person incapable for work can be concluded only by their legal representatives, that is to say warning that persons partially capable for work can conclude a contract only with the consent of their legal representative.

Confirmation of prior notification

Article 43

- (1) A consumer shall be delivered a confirmation of prior notification in writing or some other permanent medium available to the consumer, no later than at the moment of the product delivery i.e. at the day of beginning of the provision of service.
- (2) The confirmation of prior notification shall contain all the information contained in prior notification.
- (3) In case of concluding the contract on service that shall be provided by one-time use of means of distance communication and which is being charged by the operator of the means of distance communication, the trader shall not be obliged to issue the confirmation of prior notification under paragraph 1 of this Article.
- (4) In cases in which the trader is obliged to issue a confirmation of previous notification, the obligation to prove the issuing of that notification lies with the trader.

The right to terminate the contract

Article 44

- (1) A consumer shall have the right, without stating the reason, to terminate a contract concluded by means of distance communication and to which the rules contained in this Title are applied, within 8 working days.
- (2) In case of concluding the contract on the sale of a product, the time limit from previous paragraph starts as of the day of consumer's receipt of the product, with the assumption that the consumer has been delivered the confirmation of prior notification referred to in Article 43 of this Act.
- (3) In case of concluding the contract on the provision of a service, the time limit from paragraph 1 of this Article starts as of the day of concluding the contract, or, if the consumer has not received the confirmation of prior notification until the moment of concluding the contract, as of receipt of the confirmation of prior notification.

Time limit for termination of contract if prior notification has not been delivered

Article 45

- (1) If a trader does not deliver a consumer the confirmation of prior notification referred to in Article 43 of this Act, the consumer shall have the right to terminate the contract within the period of 3 months.
- (2) In case of concluding the contract on the sale of a product, the time limit from the previous paragraph starts as of the day of consumer's receipt of the product.
- (3) In case of concluding the contract on the provision of a service, the time limit from paragraph 1 of this Article starts as of the day of concluding the contract.
- (4) If, within a time limit referred to in paragraph 1 of this Article, a trader delivers a consumer the confirmation of prior notification referred to in Article 43 of this Act, the consumer shall have the right to terminate the contract within the period of 8 working days upon the receipt of the confirmation of prior notification.

Form of termination of contract

Article 46

- (1) A contract shall be terminated by a written notification on termination sent to a trader.
- (2) A contract shall be terminated in the moment when a trader receives the notification on termination.
- (3) A contract shall be considered to be terminated in time if the notification on termination is sent within the time limits referred to in Articles 44 and 45 of this Act:

Consequences of contract termination

Article 47

- (1) In the case of contract termination, a consumer shall return the product to the trader at his own expense.
- (2) A consumer shall not be deemed responsible for the damages suffered by the trader for the reasons of contract termination.
- (3) A trader is obliged to refund the consumer the total amount paid up to that moment in accordance with contract, no later than 30 days from receipt of the written notification on termination.

Exclusion of the right to terminate the contract

Article 48

Unless the parties have agreed otherwise, a consumer shall not have the right to terminate under Articles 44 and 45 of this Act in the case of:

- contract on provision of services, if the provision of service upon the explicit consent of the consumer started before the expiry of the time period within which the consumer had the right to demand the termination of contract;
- contract on selling a product or on provision of a service whose price depends on fluctuations on the financial market;
- contract on selling a product made on the basis of consumer's specifications, a product made exclusively for the consumer, or a product which cannot be returned because of its characteristics or is prone to fast deterioration;
- contract on selling audio or video recordings and computer programmes unpacked by the consumer;
- contract on selling newspapers, periodicals and magazines;
- contract on games of chance.

Influence of contract termination on authorised loan

Article 49

If the consumer was authorised a loan by the trader or by a third person on the basis of his contract with the trader, so as to pay part or the entire amount of the price stated in the contract on selling of a product or providing a service, the loan agreement shall be terminated with the termination of the contract on selling of a product or a service.

Consequences of the termination of the loan agreement

Article 50

If the consumer, in keeping with the provisions under the preceding Articles, terminates the loan agreement, the trader or a third person who authorised the loan on the basis of his contract with the trader shall have no right to charge the consumer any charges, interests or fines.

Fulfilling the contract within a time limit

Article 51

- (1) Unless the parties have agreed otherwise, the trader shall fulfil the contract on selling goods or providing services concluded at a distance within the period of 30 days after the consumer had sent him the order.

- (2) If the trader is unable to fulfil the contract, because he does not have the product on stock or because he cannot provide the ordered service, he must inform the consumer thereof, and the consumer may, if he chooses, state that he wishes to terminate the contract or give the trader reasonable additional time limit to fulfilling the contract.
- (3) If, in the case mentioned in the previous paragraph, the consumer decides to terminate the contract, the trader is obliged to refund him the payment as soon as possible, and no later than 30 days starting with the first day of being late with the delivery.

Misuse of consumer's credit card by the trader

Article 52

- (1) If a trader uses the consumer's credit card, which the consumer used to pay for the contracted product or service, in a fraudulent manner for a payment unrelated to the contract concluded with the consumer, the consumer shall have the right to demand cancellation of the payment order.
- (2) If the payment has already been made, the consumer shall have the right to demand from the trader refund of the amount paid, increased for the interests with arrears.

Prohibition of sending products without a consumer's order

Article 53

- (1) Delivery of any product or provision of a service not previously ordered by a consumer shall be prohibited if such delivery requires payment.
- (2) If a trader, contrary to paragraph 1 of this Article, sends a certain product, such a product shall be considered to be a promotional gift from the trader.
- (3) The provisions in the trader's general conditions for performing business activities or in the offer sent without being ordered by the consumer, interpreted to mean that the silence of the consumer means his acceptance of order, shall be null and void.

Request for cessation of illicit business activities

Article 54

Each person with legitimate interest, such as associations for consumers' protection and professional organisations of traders involved in distance selling, may demand from a court to order a certain trader or operator of the means of distance communication to cease business practice contrary to the provisions of the Title of this Act.

Article 55

Burden of proof

In legal proceedings initiated on the basis of the previous Article, as well as in any other legal proceedings initiated against a trader or an operator of a means of distance communication for

infringement of the consumers' rights referred to in this title of the Act, the burden of proof regarding the existence of prior notification, written confirmation of prior notification and respecting the time limit for fulfilment of the contract concluded by a means of distance communication shall lie with the trader, i.e. with the operator of a means of distance communication.

TITLE VIII

CONSUMER LOAN

Definition of consumer loan

Article 56

- (1) A creditor is required, by virtue of a consumer loan, to place at a consumer's disposal a certain amount of money, and a consumer is obliged to pay the creditor a defined interest and to repay the given amount in due time and in the manner defined by the agreement.
- (2) The consumer loan agreement shall, for the purpose of this Act, mean the contract for purchasing products and services, which enables the consumer to pay for the purchase in several instalments, where the total amount of all the instalments exceeds the price of the product or service.
- (3) The creditor shall mean any person or a group of persons who, as part of his business activity or profession, concludes loan agreements with consumers.
- (4) For the purpose of this Act, the creditor shall be considered to be a trader.

Loan agreements excluded from the application of this Title

Article 57

- (1) The provisions of this Title of Act shall not apply to:
 - loan agreements intended for the lease of an item, if the lease agreement stipulates that at the end of the contracted period the leased item comes into the possession of the lessee;
 - loan agreements stipulating that the interest shall not be paid if a consumer settles the loan payment at once;
 - agreements on authorised overdraft on current account;
 - loan agreements by which the consumer is obliged to repay the credit within 3 months;
 - loan agreements by which the consumer is obliged to repay the credit in no more than 4 instalments within a period not exceeding 12 months.

- (2) The provision of Article 69 of this Act shall not apply to loan agreements in which the creditor's claim is insured by the mortgage on the real estate.
- (3) The provision of Article 68 of this Act shall not apply to loan agreements concluded with the purpose to buy; construct; construct an annex, reconstruct, lease or to gain any other right over a real estate or a special part of a real estate.

Forms of consumer loan agreement

Article 58

- (1) In order to be valid, a consumer loan agreement must be concluded in writing.
- (2) The consumer must receive at least one copy of the agreement.

Content of consumer loan agreement

Article 59

A consumer loan agreement shall contain all the information needed for the identification of the agreement, provisions on the conditions under which the loan has been approved, and especially

- a provision on the loan amount;
- a provision on the annual interest rate and conditions under which annual interest can be changed;
- a provision on costs that can be charged at the time of the conclusion of the agreement, and conditions under which these costs can be changed;
- a provision on the loan real interest rates (effective interest rate);
- a provision on conditions under which the real annual interest of the loan can be changed;
- a provision on the amount, number and period of time or date of payment of loan instalments;
- a provision on the total cost of the loan;
- a provision on the obligation and conditions of saving or money deposit, if the deposit is a precondition for loan approval;
- annual loan interest rate and deposit interest rate, if the deposit is a precondition for loan approval;
- a provision on the means of payment insurance;
- provision on conditions and procedure of loan agreement termination.

Real annual interest on loan (effective interest rate)

Article 60

- (1) Real annual interest on loan shall amount to the total cost of the loan, expressed in total annual percentage of authorised loan.
- (2) Real annual interest shall be calculated taking into consideration the circumstances at the time of the conclusion of the loan agreement.
- (3) For calculating real annual interest, the loan agreement shall be considered valid and that both the creditor and the consumer have fulfilled the obligations arising from the contract manner and time, in the contracted manner and period.
- (4) If the loan agreement contains a provision providing for the possibility of a change of interest rates and of the amount i.e. other costs included in the real annual interest rates, it shall be considered for the needs of calculation of real annual interest that interest and other costs included in the real annual interest shall remain unchanged until the fulfilment of the loan agreement.
- (5) If a loan agreement does not state the amount of the loan approved, it shall be considered for the needs of calculation of real annual interest that the loan which has been approved amounts to 15,000 kuna.
- (6) If the loan agreement does not explicitly define the period for which the loan has been approved, or when it cannot be defined on the basis of other provisions of the agreement, it shall be considered for the needs of calculation of real annual interest that the loan has been approved for a period of one year.
- (7) When a loan agreement provides for the creditor to pay the consumer the authorised amount in several instalments, it shall be considered for the needs of calculation of real annual interest that the total loan amount has been paid on the day of the payment of the first instalment.
- (8) A unique method of calculation of real annual interest shall be prescribed by the minister in charge of trade, with the approval of the minister in charge of finance.

Total loan costs

Article 61

- (1) Total costs of the loan means all the costs, including interest and other charges that a consumer is required to pay for the loan which has been authorised.
- (2) The total cost of the loan shall not include:

- costs that the consumer must pay if he/she fails to regularly fulfil some of the provisions specified in the loan agreement;
- costs of money transfer to customer's account;
- costs of the account to which the consumer is required to pay the loan instalments, except if the consumer was not given a choice regarding the opening of such an account and if the costs of that account are unreasonably high;
- costs of remittance;
- costs of membership fee for participation in certain associations or groups that do not arise from the loan agreement, and influence the conditions of the loan agreement;
- costs of the loan payment insurance, except for insurance costs for insurance covering consumer's death, illness or loss of employment, if the amount of insurance costs covering such cases, including the interest and other costs, equals to or exceeds the total loan amount or if that insurance was a precondition for loan approval;
- costs other than the price of a product or a service for the purchase of which the loan was approved, and which the consumer would be required to pay under the agreement on the purchase of these products or services, regardless of whether he pays for them with his own or with borrowed money.

Informing the consumer

Article 62

- (1) The creditor shall be required to inform the consumer, in writing, and within a reasonable period of time, on the highest loan amount possible, if such exists, on annual interest rates and on conditions under which they can be changed, on costs charged when concluding the contract and on conditions under which they can be changed, as well as on the conditions and procedures of agreement termination.
- (2) After concluding the loan agreement, the creditor shall be required to inform the consumer of every change regarding the annual interest rate or any other cost, within a reasonable period of time once the change has occurred.
- (3) The information from paragraph 2 of this Article shall be delivered to the customer, enclosed with in the statement of account, in the form of a written notification or in any other manner agreed upon by the parties.

Advertising

Article 63

Any advertising, whether in the form of an offer to conclude an agreement or not, displayed in the business premises or delivered to the consumer in any other way, and which contains the offer for approving the consumer's loan directly or through a third person, must contain the

annual interest rate, information on all other loan related costs as well as information on real annual interest.

Fulfilling the credit agreement before the deadline

Article 64

- (1) A consumer shall have the right to repay the credit before maturity.
- (2) In the case referred to in paragraph 1 of this Article, the consumer shall have the right to a reasonable reduction of the total cost of the loan, consisting of the difference between the amount of interest from the moment of repayment and the moment when, according to the contract, the repayment was due.

Changes of creditor

Article 65

If the change of a creditor occurs as a result of the cession of his claim or cession of the agreement, the consumer shall have the right to refer to the new creditor all the complaints he would otherwise refer to his former creditor, except for strictly personal complaints.

Repaying the loan by means of non-cash payment

Article 66

- (1) If it is stipulated that a consumer may repay the loan by a promissory note, cheque or some other means of non-cash payment, the creditor shall be required to use these means of payment only for the repayment of the loan.
- (2) If a creditor uses a promissory note, a cheque or any other means of non-cash payment from some other purpose, he shall be responsible for the damages caused by this to the consumer.

Prohibition of transferring the creditor's rights

Article 67

It shall not be possible to oblige the consumer, under the loan agreement, to transfer to the creditor or to a third person, or to restrict to the advantage of the creditor or a third person his/her rights, to which the consumer is entitled with respect to the person with whom he/she has concluded the contract financed by the loan agreement, in case of non-fulfilment or irregular fulfilment of the contract.

The creditor's responsibility for the trader

Article 68

- (1) If, for the purpose of buying a product or a service, a consumer has concluded a loan agreement with a person who is not the trader selling this product or service, and the loan agreement is concluded on the basis of prior contract made between the creditor and the trader of the product or service in accordance with which the creditor is required to approve to consumers only those loans used to purchase that particular trader's product or service, the consumer may request from the creditor compensation for damages suffered because of non-fulfilment or irregular fulfilment of the purchase agreement if he does not manage to exercise the rights with respect to the seller because of non-fulfilment or irregular fulfilment of the purchase agreement.
- (2) If, in the case referred to in the previous paragraph of this Article, the purchase agreement is terminated, the loan agreement shall also be terminated, and the creditor cannot demand from the consumer to pay compensation for damages suffered for that reason.
- (3) A creditor who, in accordance with paragraph 1 of this Article has compensated for the damages the consumer suffered because of non-fulfilment of irregular fulfilment of the purchase agreement, shall be entitled to demand from the trader to refund all the payments made to his account, interest starting with the day of payment, costs arising from the dispute with the consumer from the moment of informing the trader on that dispute, as well as the compensation for damages the creditor suffered by the aforementioned.

Legal lien

Article 69

A creditor who concluded a consumer loan agreement with the consumer shall have, in order to insure his claims arising from the credit agreement, the lien to the articles purchased by the consumer with the borrowed money.

Credit in the form of authorised current account overdraft

Article 70

- (1) If a bank or another financial institution acting as a creditor approved a loan to the consumer, in the form of authorised current account overdraft, the consumer must be informed before or when concluding the agreement of the permitted upper overdraft limit on the current account, annual interest rates as well as on conditions under which they can be changed, on costs charged when concluding the contract, on conditions under which these costs can be changed, as well as on conditions and procedure of agreement termination.
- (2) After concluding the loan agreement, the creditor is obliged to inform the consumer on any change of annual interest rates or any other cost, within a reasonable period of time after the change has occurred.

- (3) The information referred to in the previous paragraphs of this Article shall be delivered to the consumer, enclosed in the statement of account, in the form of written notification or in another manner agreed upon by the parties.

Tacit approval of current account overdraft

Article 71

- (1) If the bank or another financial institution tacitly allows a current account overdraft it shall notify the consumer in writing of the annual interest rate and other costs with which the consumer's current account shall be charged in relation to the overdraft, as well as on the change in interest rate or costs if the overdraft exceeds three months.
- (2) The information from the previous paragraph of this Article shall be delivered to the consumer enclosed in the statement of account, in the form of written notification or in another manner agreed upon by the parties.

TITLE IX

CONTRACTS ON THE RIGHTS TO LIMITED TIME USE OF REAL ESTATE (TIMESHARE)

Scope

Article 72

- (1) The provisions contained in this Title regulate one or more contracts concluded for a period covering not less than three years and by which the trader, directly or indirectly, establishes or transfers, on behalf of the consumer, the right to use one or more real estate properties or one or more portions of real estate for a determined or determinable period of time within a year, while the consumer agrees to pay the total price of this service.
- (2) The provisions contained in this Title shall be applied even when they have been circumvented by different formulations 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 governing act.
- (3) In order to be deemed binding the contract mentioned in paragraph 1 must be in written form.
- (4) In order to be deemed binding the contract mentioned in paragraph 1 must be written in the official language of the country of the consumer's residence or temporary residence or if desired by the consumer in the official language of the consumer's nationality, and the official language of the country where the real estate is located.
- (5) At least one copy of the contract must be delivered to the consumer.

Registering the right to limited time use of real estate

Article 73

- (1) Any persons who attain the right to limited time use of real estate on the basis of a contract mentioned in the previous Article, shall be entitled to register this right in the Land Register if the real estate is located in the territory of the Republic of Croatia.
- (2) The right to limited time use of a real estate property shall not contradict the right of a person who has acting in good faith registered his right regarding the real estate into the Land Register before the right to limited time use has been registered.

Advance information

Article 74

- (1) The trader shall deliver to every person seeking information on the right to limited time use of a real estate property, written information that shall contain, apart from the general description of the real estate property, at least brief and accurate information related to items 1 to 8, 10, 13, 14 of paragraph 1, Article 75, and if a building has not yet been constructed on the property, the information shall include that regarding items 1 to 5 of paragraph 2, Article 76 as well as instructions on the place and method of obtaining more detailed information.
- (2) The information stated in paragraph 1 of this Article shall be written in the official language of the country of the consumer's residence or temporary residence or if desired by the consumer in the official language of the consumer's nationality, and the official language of the country where the real estate is located.
- (3) Every advertisement regarding a contract on the limited time use of real estate must contain the possibility of acquiring advance information as well as the location where this information can be obtained.

Contents of the contract or binding preliminary contract

Article 75

- (1) The contract or binding preliminary contract on the right to limited time use of real estate shall contain the following information:
 - the name, address and main office address of the parties;
 - the legal background entitling the trader to dispose of the real estate in the manner stipulated in Article 72, paragraph 1 of this Act;
 - rights of the consumer that stem from the right to limited time use of a real estate;
 - the state of completion of electrical, gas, water and telecommunications network
 - if the real estate is defined in contract, the exact description of the real estate and it's location;
 - utilities such as electrical power, water, maintenance, telephone, garbage removal, that are at the disposal of the consumer as well as the conditions under which the utilities may be used;
 - the common facilities, such as a swimming pool or a sauna, to which the consumer is entitled, and the conditions for their use;
 - rules governing maintenance and management of the property;

- the exact time frame within which the consumer has the right to use the real estate and the date after which the consumer may commence using the property;
 - the contracted price, approximate calculation for the cost of using common facilities and utilities, the basis for the calculation of user costs, mandatory payments such as taxes and fees, maintenance and management costs;
 - a provision stating that the trader guarantees that the use of the real estate property shall not incur costs other than those stipulated in the contract ;
 - a provision defining whether it is permitted to trade-in or sell the right to limited time use of a real estate, as well as a provision defining the costs of such a trade-in or sale if conducted through the trader or a person authorised by the trader;
 - a notice on the right of the consumer to unilaterally terminate the contract stated in Article 77 of this Act, the manner in which the contract may be terminated as well as the time limit for termination, the person to whom a written notification of the termination shall be sent, and the nature and amount of expenses the consumer shall be obligated cover if he or she exercises the right to terminate;
 - the date and place each contracting party has signed the contract.
- (2) If, at the time the contract or binding preliminary contract is being signed, a building has not yet been constructed in the real estate property, along side information required by paragraph 1 of this Article, the contract or binding preliminary contract on limited time use of a real estate must contain the following information:
- the level of completion of the building;
 - a realistic estimate of the period within which the building shall be completed;
 - the number of the building permit as well as the name and the full address of the issuing authorities;
 - the level of completion of the electrical, gas, water and telephone infrastructure;
 - a guarantee that the building shall be completed on time as well as a guarantee binding the trader to reimburse the consumer for all amounts paid towards the contract if the building is not constructed on time, and the conditions under which this guarantee may be put to effect.

Effect of advance information on the contract

Article 76

- (1) Information given in the advance information shall constitute an integral part of the contract unless the parties have explicitly agreed to deviate from this information and state this in the contract.
- (2) Unless explicitly agreed upon by the parties, the information given in the advance information may be changed in the contract only if the changes are a result of circumstances beyond the trader's control.
- (3) The trader shall, prior to the conclusion of the contract inform the consumer of any changes in relation to the advance information, and these changes shall be explicitly listed in the contract.

The right of the consumer to unilateral termination

Article 77

- (1) The consumer may, for any reason, terminate the contract or binding preliminary contract, but must do so in writing to the person stated for that purpose in the advance information, contract or a binding preliminary contract:
 - a) without stating a reason, within 10 working days from the date the contract or a binding preliminary contract has been signed;
 - b) within three months from the date of signing the contract or a binding preliminary contract, when the contract or the binding preliminary contract do not contain all the information required by Article 75 of this Act;
 - c) within one month from the date of signing the contract or the binding preliminary contract, if the trader has failed to give the consumer the advance information specified in Article 74, paragraph 1 of this Act;
 - d) if the trader communicates to the consumer in writing, within three months from the date of signing the contract or the binding preliminary contract, the information missing from the contract or the binding preliminary contract at the moment of signing, unless the consumer has in the meantime already dispatched the notice on termination, the consumer may terminate the contract or the binding preliminary contract within 10 working days from the date when the last missing information was communicated to him or her in writing;
 - e) if the consumer does not receive missing information within three months of signing the contract or binding preliminary contract, he or she may terminate the contract within 10 working days starting on the expiration date of the three month period.
- (2) It shall be deemed that the notice on termination is valid if it has been sent within the time limits defined in the previous paragraph.
- (3) In the case of termination of the contract or the binding preliminary contract under item a) paragraph 1 of this Article, the consumer shall reimburse to the trader only the costs of validating the contract or binding preliminary contract if this is explicitly stipulated in the contract.
- (4) In the case of termination of the contract or the binding preliminary contract under items b) to e) paragraph 1 of this Article, the consumer shall not be obligated to reimburse any costs.

Burden of proof

Article 78

In the case of a dispute concerning whether and on which date the consumer was given the advance information, the contract or the binding preliminary contract, the burden of proof shall lie with the trader.

Effect of unilateral termination on a credit agreement

Article 79

- (1) If, in order to make payment on the contract for limited time use of a real estate, the consumer has been granted credit from the trader or a third person on the basis of an

agreement with the trader, a unilateral termination of the contract for limited time use of a real estate also terminates the credit agreement.

- (2) In the case of paragraph 1 of this Article the consumer is not obligated to make payment on the contracted interest, pay potential damages or penalties, and the person granting the credit shall return to the consumer all payments received on the basis of the credit agreement.

Prohibition on advance payments

Article 80

The trader shall be prohibited from demanding any payments from the consumer on the basis of a signed contract or preliminary contract before the time limits for termination of contract defined in Article 77 paragraph 1 of this Act have expired.

TITLE X

UNFAIR PROVISIONS IN CONSUMER CONTRACTS

The concept of an unfair contractual provision

Article 81

- (1) Contractual provisions, which have not been individually negotiated, shall be regarded as unfair if, contrary to the principle of conscientiousness and integrity, they cause a significant imbalance in the rights and obligations of the parties under the contract, to the detriment of the consumer.
- (2) It shall be deemed that an individual provision has not been negotiated if it has been drafted in advance by the trader and the consumer has therefore not been able to influence the substance of the provision, particularly in the context of a pre-formulated standard contract.
- (3) The fact that certain aspects of a contractual provision, i.e. a certain contractual provision have been individually negotiated does not exclude the possibility that the remainder of the contract be deemed unfair if an overall assessment of the contract indicates that it is nevertheless a pre-formulated standard contract.
- (4) The burden of proof that a certain provision of a pre-formulated standard contract has been individually negotiated shall be incumbent on a trader.
- (5) The provisions of this Act shall not apply to contractual provisions that introduce coercive provisions into a contract, that is provisions and principles of conventions that are binding for the Republic of Croatia.

Certain contractual provisions that may be deemed unfair

Article 82

Contractual provisions that may be deemed unfair, subject to the fulfilment of the conditions stated in the previous Article, are:

- a provision on limiting or waiving liability of the trader for damages caused by the death or physical injury of the consumer, if the damage is a consequence of the trader's actions;
- a provision on limiting or waiving the rights of the consumer against the trader or a third person in case of partial or complete failure to fulfil contractual obligations, including the provision on excluding the possibility of clearing the consumer's debt with the trader's debt to the consumer;
- a provision binding the consumer to fulfil contractual obligations, while the fulfilment of contractual obligations of the trader are dependent on circumstances entirely under the control of the trader;
- a provision entitling the trader to retain all payments made by the consumer after the consumer has decided not to sign or fulfil the contract, while the same right is not given the consumer if the trader decides not to sign or fulfil the contract;
- a provision obligating the consumer to pay damages for failure to fulfil that significantly exceed the actual damage;
- a provision entitling the trader to terminate the contract at his discretion, while the same right is not given the consumer;
- a provision entitling the trader, in case of contract termination, to retain payments for services not yet rendered;
- a provision entitling the trader to terminate a contract signed for an indefinite period without allowing a reasonable termination period, except in cases where justified reasons for termination exist;
- a provision enabling the extension of a fixed period contract for an indefinite or definite period if the consumer does not, before expiration of the contract, state that he or she does not wish to extend the contract, if the period given for submitting such a statement is unreasonably short;
- a provision imposing certain obligations on the consumer without having familiarised the consumer with this provision before signing the contract;
- a provision entitling the trader to unilaterally change contractual provisions without a justifiable reason stipulated in the contract;
- a provision entitling the trader to unilaterally change features of the products or services that are the subject-matter of the contract, without a valid reason;
- a provision by which the price of goods or services is established at the time of delivery or performance, or a provision allowing the trader to increase the prices, without recognising the consumer's right to terminate the contract if the real price is much higher than the one agreed at the time the contract was signed;
- a provision entitling the trader to judge whether the sold product or rendered service is in accordance with the contract;
- a provision granting an exclusive right to the trader for interpreting all or certain contractual provisions;
- a provision limiting or waiving liability of the trader for obligations taken over on his behalf by a representative, or a provision by which the fulfilment of these obligations is subject to the fulfilment of certain formalities;
- a provision obligating the consumer to fulfil his or her contractual responsibilities although the trader has not fulfilled his contractual responsibilities;
- a provision entitling the trader to transfer his rights and responsibilities to a third person without prior consent from the consumer, if by this the consumer is placed in a less favourable position;
- a provision waiving, limiting or encumbering the right of the consumer to exercise his or her contractual rights before a court of law or another competent body, and

especially a provision obligating the consumer to settle disputes through arbitration that is not proscribed by the governing law, or a provision disabling the presenting of evidence benefiting the consumer, or a provision by which the burden of proof is transferred to the consumer if, according to the governing law, the burden of proof would lie with the trader.

Circumstance taken into account when assessing the contract

Article 83

When assessing whether or not a certain contractual provision is fair, the nature of the product or service that are the subject-matter of the contract shall be taken into account, as well as all the circumstances preceding and during the signing of the contract, other contractual provisions and any other contract that may present the primary contract in relation to the contract being assessed.

Prohibiting assessment of certain contractual provisions

Article 84

It shall be prohibited to assess the fairness of provisions concerning the subject-matter and the price of the contract if they are clear, easily understandable and easily visible.

Contractual provisions in writing

Article 85

If the act or agreement between the parties requires the contract to be in writing the provisions must be written clearly, in easily understandable language and visibly.

Interpretation of the contract

Article 86

- (1) Ambiguous or unclear contractual provisions shall be interpreted to the benefit of the consumer.
- (2) The rule stipulated in the previous paragraph shall not be applied in procedures initiated on the basis of Article 88 of this Act.

Consequences of unfair contractual provisions

Article 87

- (1) An unfair contractual provision shall be deemed null and void.
- (2) A null and void provision shall not nullify the contract if the contract can be performed without the nullified provision.

Request for prohibiting the use of unfair contractual provisions

Article 88

- (1) Anybody with a justified interest in consumer protection, especially consumer protection associations, may require from the court to prohibit a certain trader in using contractual provisions in standard contracts if the court determines that the said provision is unfair according to the provisions of this Title of the Act.
- (2) The procedure referred to in the above mentioned paragraph of this Article may be initiated against an individual trader, a group of traders from the same economic sector, as well as against interest associations of these traders that use or recommend the use of disputable provisions.

CHAPTER III

ADVERTISING PRODUCTS AND SERVICES

Advertising

Article 89

- (1) For the purposes of this Act, advertising products and services shall mean any announcement given in any form by anybody in the field of their profession or business activity and aimed at promoting a product or service.
- (2) Misleading advertising shall mean advertising that deceives or is likely to deceive the persons to whom the advertising is directed and is therefore likely that this advertising shall influence the economic behaviour of the persons to whom it is directed.
- (3) Misleading advertising shall also include advertising which, due to the fact that it creates false belief in the persons to whom it is directed, inflicts damage or is likely to inflict damage to competitors on the market.
- (4) Comparative advertising means any advertising that for the purposes of promoting a product or service refers directly or indirectly to a competitor on the market, or that directly or indirectly refers to a competitor's product or service.

Prohibiting misleading advertising

Article 90

- (1) Misleading advertising is prohibited.
- (2) Competitive advertising is permitted exclusively subject to the fulfilment of conditions stipulated in Article 92, paragraph 1 of this Act.
- (3) Prohibited advertising is also advertising that offends human dignity, that is unethical and causes or is likely to cause physical, mental or other injuries in children and any advertising that sends a message or part of a message that can exploit or abuse, or is likely to abuse children's credulity or lack of experience.
- (4) It is prohibited to leave advertising pamphlets and material on the doorsteps of consumers' houses or apartments, as well as in mailboxes if such a prohibition has been distinctly written on them.

Assessment of misleading advertising

Article 91

When assessing whether or not advertising is misleading, all aspects of the advertising shall be taken into account, especially any information contained in the advertisement pertaining to:

- the characteristics of a product or a service, such as: nature, composition, process and the date of production, manner and time frame for performing the service, availability of the product or service, quantity of the product, suitability of the product or service regarding its intended purpose, geographical and commercial origin of the product or service, results that can be expected upon use of the product or service, results and other indicators regarding tests and examinations conducted on the product or service;
- the price, price calculation method and terms and conditions of product sale or service provision;
- nature, characteristics and rights of the advertiser, his identity and assets, his qualifications, intellectual property, awards and acknowledgements received.

Conditions for permitted comparative advertising

Article 92

(1) Comparative advertising is permitted:

- if it is not misleading as defined in the previous provisions of this Act;
- if subjects of the comparison are product or services that meet the same needs or serve the same purpose;
- if the comparison of the features of different products or services are objective and the features are material, essential, comparable and verifiable;
- if it does not create confusion on the market regarding the relation between the advertiser and his competitors or between the advertised product or service and a competitors product or service;
- if it does not degrade a competitor on the market, his activities, products, services, trademarks or trade names;
- if, in regard to products of designated origin, products of the same origin are compared;
- if it is not directed towards the abuse of the reputation of a competitor's trademark, trade name or other insignia, the competitor's product or service;
- if it is not directed towards the abuse of the designation of origin of a competitor's product or service;
- if it does not relate to a product or service that is being advertised as an imitation of a product or service bearing a trademark or trade name.

(2) If the competitive advertising relates to a product or service offered within the scope of a special offer, the advertisement shall, in a clear and unambiguous manner, contain information on the time frame for which the special offer is valid and on whether the purchase of the product or service under special conditions depends on the availability of the product or service.

Request for terminating or prohibiting unpermitted advertising

Article 93

- (1) Persons bearing a justified interest are authorised to request the court to terminate misleading, i.e. unpermitted comparative advertising.
- (2) If the advertisement has not yet been made public but the publication is certain to occur, the persons bearing a justified interest are authorised to request the court to prohibit the publication of misleading, i.e. unpermitted comparative advertising.
- (3) Upon the request of a party, the court may along side an order to terminate misleading i.e. unpermitted comparative advertising, also order the publication of the judgement in whole or in part, at the expense of the advertiser, or may at the expense of the advertiser order the publication of a corrected advertisement.

Issues not open for deliberation

Article 94

In deciding on requests mentioned in the previous Article, the court shall not deliberate on whether the advertising in question has caused damages or is likely to cause damages, nor on whether the advertiser is responsible for the misleading nature of the advertising, or responsible for the fact that the comparative advertising is not permitted.

Presumed inaccuracy of statements in an advertisement

Article 95

- (1) During the first hearing the court shall require from the advertiser to submit evidence confirming the accuracy of the disputed factual statements contained in the advertisement. The advertiser shall be required to submit this evidence within seven days.
- (2) In the event the advertiser does not supply the requested evidence by the prescribed deadline defined in the previous paragraph of this Article, or in the event the court considers the submitted evidence to be incomplete, the disputed factual statements shall be deemed inaccurate.

CHAPTER IV

SUBJECTS IN CONSUMER PROTECTION

TITLE I

NATIONAL CONSUMER PROTECTION PROGRAMME

Article 96

- (1) The National Consumer Protection Programme shall determine the basic policies of consumer protection for a specific period and shall define the selection and scope of priority activities in the area of consumer protection that shall be financed from the National Budget. The National Consumer Protection Programme shall be adopted by the

Croatian Parliament (Sabor) upon the proposal of the Government of the Republic of Croatia, for a period of two years.

- (2) The Croatian Parliament (Sabor) shall adopt the National Consumer Protection Programme within one year starting from the date of entering into force of this Act.
- (3) Activities regarding the implementation of the policies for consumer protection, especially monitoring and maintaining records on conducted activities contained in the National Consumer Protection Programme shall be performed by the Ministry of Economy.

Article 97

The National Consumer Protection Programme shall determine in particular:

- the principles and goals of the consumer protection policy;
- the priorities in the realisation of the consumer protection policy;
- the general amount and plan for utilising financial resources in carrying out the tasks contained in the National Programme;
- the general amount and plan for utilising financial resources aimed at stimulating the development and activities of the consumers' associations.

Article 98

(1) Consumer protection is carried out in the public interest and is ensured by the Republic of Croatia.

(2) The bodies providing concessions for the provision of public services: power supply, city and commuter traffic, utility and public voice telecommunications services, shall ensure that the concession holder provides the services in a socially acceptable manner taking into account the fact that persons with lower incomes or special social needs may use the public service.

(3) Competent bodies of state administration and local and regional self-government shall create conditions for competition in the field of public services. Where there is a monopoly, the competent authorities shall ensure the provision of public services in a socially acceptable manner, taking into account the fact that persons with lower incomes or special social needs may use the public service.

Consumer Protection Council

Article 99

- (1) Upon the proposal of the Minister responsible for trade, the Government of the Republic of Croatia shall appoint the Consumer Protection Council, composed of representatives of competent bodies of the state administration, Consumer Protection Associations, the Croatian Chamber of Commerce, the Croatian Employers' Association, the Croatian Chamber of Crafts and Trades, as well as respected experts in the field of consumer protection. One third of the members of the Consumer Protection Council shall be appointed by the Government of the Republic of Croatia upon the proposal of consumer protection associations.
- (2) The Consumer Protection Council shall be presided over by the Minister responsible for trade or a person authorised by the Minister.
- (3) The Consumer Protection Council shall propose a National Consumer Protection Programme to the Government of the Republic of Croatia.

- (4) The Consumer Protection Council shall report to the Croatian State Parliament and to the Government of the Republic of Croatia on the implementation of the National Consumer Protection Programme.
- (5) The work of the Consumer Protection Council shall be public. The Council shall adopt Rules of Procedure for its activities.
- (6) The members of the Council shall receive remuneration for participation in the work of the Council. The amount of remuneration shall be determined by the Minister, and the means shall be provided for in the budget.
- (7) The decision on the establishment of the Consumer Protection Council and its composition shall be published in the *Official Gazette*.

Article 100

- (1) Activities in the field of consumer protection as defined in the National Consumer Protection Programme shall be conducted by consumer associations and educational institutions in co-operation with local self-government.
- (2) Activities to be carried out as part of the National Consumer Protection Programme shall be assigned through a decision of the Government of the Republic of Croatia on the basis of a public tender and upon the proposal of the Consumer Protection Council.

TITLE II

CONSUMERS' ASSOCIATIONS

Founding associations and unions of associations

Article 101

- (1) Consumers' associations are established by consumers to promote and protect their rights. The relevant provisions of the Act on Associations shall apply to consumers' associations.
- (2) All consumers' associations may join the Union of Consumer Protection Associations in order to implement consumer protection policy, provide mutual support and meet the interests of consumers' associations on a national and international level.
- (3) The Union of Consumer Protection Associations shall, on behalf of its members and for the benefit of all consumers, in public and before state administration bodies for the purpose of protecting common consumer interests, provide opinions on the proposals of regulations that may affect consumers, participate through its representative in discussions of Parliamentary Committee meetings which are of interest to consumers, serve as mediator between the State and the consumer, as well as between traders and consumers, with the aim of protecting the consumer.
- (4) The Union of Consumer Protection Associations is a legal person.
- (5) The Union of Consumer Protection Associations shall inform consumers on their rights and shall publish a list of traders who have on repeatedly, during the course of the previous year, damaged consumers or consciously sold products endangering the health and safety of consumers.
- (6) All the associations shall on equal terms participate in the work of the Union of Consumer Protection Associations.

- (7) The President of the Union of Consumer Protection Associations shall during his or her mandate also be a member of the Consumer Protection Council.
- (8) The Union of Consumer Protection Associations may form ad hoc arbitration committees subject to the consent of the parties in arbitration.

Activities of the associations

Article 102

Consumer Protection Associations shall in particular perform the following activities related to consumer protection:

- provide information to consumers on their rights and events on the market;
- carry out additional testing of products on the market, in licensed domestic laboratories, as well as in foreign countries, if necessary;
- carry out comparative testing of products, with the help of authorised persons and publish the results in the media ;
- assist consumers who have incurred damages in approaching the trader;
- keep records on received consumers' complaints and proceedings undertaken for their resolution;
- inform the Ministry of the Economy and the State Inspectorate on received complaints, undertaken proceedings and solutions;
- submit comments and suggestions during the process of adopting regulations relevant to the field of consumer protection;
- initiate, before the competent court, proceedings for requesting from the court to order the discontinuation of business activities of a trader or operator of the means of communication which are contrary to the provisions contained in Title 7, Chapter II of this Act;
- initiate, before the competent court, proceedings for requesting from the court to prohibit a specified trader, group of traders in the same economic sector or their interest associations the use of unfair contractual provisions in standard contracts;
- initiate, before the competent court, proceedings for requesting from the court to terminate misleading or unpermitted comparative advertising, or proceedings for requesting from the court to prohibit the publication of as yet unpublished misleading or unpermitted comparative advertising;
- carry out other activities in the field of consumer protection.

(2) Counselling Offices shall be established by consumer protection associations for the purpose of providing organised assistance to consumers.

(3) The Ministry of the Economy shall issue an authorisation for the work of the Counselling Office on the basis of the needs provided for in the National Programme and on the basis of professional qualifications of the employees.

(4) The assessment of the professional qualification of the persons for the work in the Counselling Office shall be provided by the Ministry of the Economy. The assessment procedure shall be regulated by an ordinance adopted by the Economy Minister.

(5) The funds for the operation of the Counselling Office shall be provided for in the state budget.

Preventive consumer protection

Article 103

The associations shall perform preventive consumer protection through providing information and advice to the consumer, as well as by consumer education.

TITLE III

CONSUMER EDUCATION

School curricula

Article 104

The curricula in primary and secondary education shall include basic knowledge on consumer obligations, rights and protection.

CHAPTER V

INSPECTION AND SUPERVISION

Article 105

Supervision over the enforcement of this Act shall be performed by the authorised inspector of the State Inspectorate, as well as other authorised inspectors (hereinafter referred to as: inspector), in accordance with the authority established by law.

Article 106

(1) If the inspector establishes that:

- a trader is selling a product with a flaw or fault without separating it from the rest of the products and clearly indicating on the product and at the selling point that the product is being sold as faulty and defective (Article 13);
- a product offered for sale at a reduced price is not clearly and visibly priced with the price before and after the reduction (Article 19, paragraph 1);
- the highest percentage of the price reduction of products offered for sale at reduced prices is not equal to at least one fifth of all products at the beginning of the sale (Article 19, paragraph 2);
- a product, which is offered for sale at a reduced price because of its imminent date of expiry, does not have its shortest or final date of expiry visibly and legibly stated (Article 20);
- the trader has failed to physically separate products offered for sale at reduced prices from those that are not offered for sale at reduced prices and has failed to visibly and legibly announce a sale at reduced prices (Article 21, paragraph 1), shall be temporarily prohibited from selling by virtue of a decision.

(2) An appeal against the decision specified in paragraph 1 of this Article shall not delay the execution.

Prohibition of misleading or unpermitted comparative advertising

Article 107

- (1) In conducting the inspection the inspector is authorised to issue a temporary decision to the legal or natural person, pending a valid court decision, to discontinue the commenced or prohibit the as yet not published advertising when suspected of being misleading or unpermitted comparative advertising.
- (2) An appeal against the decision specified in paragraph 1 of this Article shall not delay the execution.

CHAPTER VI

PENALTY PROVISIONS

Article 108

- (1) A trader as a legal person shall be fined an amount between 50,000 and 100.000 kuna for a violation, if:
 - he or she misleadingly advertises a product or a service (Article 89, paragraphs 2 and 3);
 - he or she through advertising offends human dignity, if the advertising is unethical and causes or is likely to cause physical, mental or other injuries in children and sends a message or part of a message that exploits or abuses, or is likely to abuse children's credulity or lack of experience (Article 90, paragraph 3);
 - he or she acts contrary to the provisions contained in Article 92 of this Act.
- (2) A natural person in charge of a legal person shall be fined for violations listed in paragraph 1 of this Article a fine between 2.000 and 10.000 kuna.

Article 109

- (1) A trader, creditor or a third person as a legal person shall be fined an amount between 3.000 and 30.000 kuna, if he or she:
 - does not exchange a defective product at the consumer's request with a new product or returns the amount paid for the product to the consumer, that is lowers the price or, with the consumer's consent, removes the defect from the product, if he was obliged to do that (Article 5)
 - if the service is not adequately provided returns the amount paid for the product to the consumer, that is lowers the price or, with the consumer's consent, removes the defect from the product, if he was obliged to do that (Article 5)
 - without a justified reason does not fulfil a contract concluded with the consumer or does not fulfil it in time (Article 5)
 - refuses without fully justified reasons to conclude a contract of sale with a consumer for a product displayed at the place of sale or a service that is the subject of his/her business (Article 7, paragraph 1);
 - fails to clearly and legibly expose the conditions of sale in the shop, and fails to clearly and legibly state special conditions for certain products clearly and visibly at the selling point of these products (Article 7, paragraph 2);
 - for the services of repair or maintenance whose total value exceeds 500 kuna, fails to supply the consumer with a written estimate and work order containing the description of

- works, used material and parts for repair as well as an unsigned work order (Article 7, paragraph 4);
- during repairs does not receive from the consumer advance written permission to extend the scope of the work order (Article 7, paragraph 5);
 - fails to state the retail price of a product or service clearly, visibly and legibly, in kuna as prescribed by Article 8, paragraphs 1 and 8;
 - places a price on a product or service that is not final for the consumer (Article 8, paragraph 2);
 - fails to give the unit price along side the retail price of a pre-packed product in consumer packaging if the packaging unit and product unit are different (Article 8, paragraph 4);
 - advertising does not contain the price provided for in Article 10 of this Act
 - does not allow the consumer to check the accuracy of the calculated amount in relation to quality and quantity of a purchased product, that is, of provided service (Article 12, paragraph 2)
 - fails to adhere to the selling price for the product or service or the condition of sale (Article 12, paragraph 3);
 - fails to state the price of special wrapping paper and additional decorations as well as the service price for wrapping clearly, visibly and legibly (Article 15, paragraph 2);
 - fails to offer to the consumer, at the same price, bags without logo or name of the consumer or trader (Article 15 paragraph 3)
 - fails to keep the packaging of a product at a consumer's request (Article 15 paragraph 3)
 - fails to deliver to the consumer, at the latest upon concluding the contract, written notification of his or her right to terminate a contract concluded outside the trader's business premises (Article 31, paragraph 3);
 - fails to increase the returned amount of money for default interest calculated from the time of receipt of a written notification of the termination of contract till the time of payment (Article 34 paragraph 3)
 - fails to act in accordance Article 44 of this Act
 - seeks reasons for terminating the contract inside the period stipulated in Article 44, paragraph 1;
 - charges the consumer costs, interest or penalties contrary to those stipulated in Article 51 and Article 79, paragraph 2;
 - fails to inform the consumer in writing, either before or upon signing the contract, on provisions contained in Article 62, paragraph 1 of this Act;
 - acts contrary to provisions of Article 71 of this Act
 - fails to deliver a notification to the person demanding a notification or delivers a notification contrary to provisions of Article 74 of this Act
 - demands payment from the consumer contrary to that proscribed in Article 80;
 - insists on unfair contractual provisions referred to in Article 81
- (2) A natural person in charge of a legal person shall be fined for violations listed in paragraph 1 of this Article a fine between 2,000 and 5,000 kuna.
- (3) For the violation specified in paragraph 1 of this Article, a trader-natural person shall pay an on-the-spot fine of 300 kuna to the inspector.

Article 110

- (1) A Fine between 10,000 and 50,000 kuna shall be imposed on a legal person – credit provider if:
- he or she contests or makes it impossible for a consumer to provide evidence in accordance with Article 68, paragraph 1 of this Act;

(2) A natural person in charge of a legal person shall be fined for violations listed in paragraph 1 of this Article a fine between 2,000 and 5,000 kuna.

Article 111

(1) A Fine between 10,000 and 50,000 kuna shall be imposed on a legal person-trader, if:

- the trader discloses information on the consumer to a third party, or to any party participating as a legal or natural person within the same group of companies (concern) to which the trader belongs, unless the consumer gives his or her consent in writing (Article 7, paragraph 3);
- the trader fails to acknowledge that the consumer has paid the bill in accordance with Article 11 of this Act;
- the trader fails to supply a correct, clearly visible and legibly written bill (Article 12, paragraph 1);
- the trader imposes an additional charge for issuing an invoice (Article 12, paragraph 4);
- the trader fails to present to the consumer at the time of the sale documents listed in Article 14 of this Act;
- the packaging is hazardous to health (Article 15, paragraph 1);
- the trader fails to adhere to Article 16 of this Act;
- puts on sale a defective product, and refuses to familiarise the consumer with the defect (Article 21, paragraph 2)
- the trader fails to calculate the sale of energy and water to a consumer on the basis of actual consumption read on consumers' meters (Article 22, paragraph 1);
- fails to familiarise the consumer with all the conditions for the provision of public services and publicly announces those conditions (Article 22, paragraph 3)
- fails to obtain the opinion from an advisory body for the decisions on the rights and obligations of consumers (Article 22, paragraph 4)
- provides a public service and does not establish a complaints commission (Article 22, paragraph 5)
- does not maintain proper standards and quality of provided public service in accordance with special legislation (Article 24)
- does not conclude a written contract with the consumer on the use of services of connection or access to public telecommunications network and if the contract does not contain all the data prescribed by Article 25 of this Act
- fails to enable the consumer at his request to restrict certain types of outgoing calls, that is calls to certain types of numbers, in accordance with Article 26(1) of this Act
- fails to allow payment for access to public telecommunications network and use of public voice services in advance (Article 26(2))
- fails to provide the consumer, in order to avoid disputes, monitoring and control of costs incurred by usage of public voice service (Article 27)
- the trader demands or expressly conditions the buying of a product or service on a partial or total advance payment and delivers the product or provides a service upon receiving the advance payment, and fails to calculate and pay interest to the consumer upon delivery of the product or in performing a service, by the interest rate for three-month tied deposits in the trader's commercial bank, if the delivery time exceeds one month (Article 28);
- the trader does not possess an identification card (Article 29, paragraph 3);
- without the previous consent of the consumer, he or she uses individual means of distance communication directed at the consumer (Article 41);
- the trader prior to concluding a contract at distance by means of a distance communication device fails to notify the consumer of all the provisions of Article 42 paragraph 1 of this

Act, or if this notification is not in accordance with the provisions of Article 42 of this Act;

- the trader fails to repay the consumer the amount paid within 30 days of receiving notice that the consumer terminated the contract (Article 47, paragraph 3);
 - the trader fails to add interest to the amount paid for the period from the receipt of a written notice about the termination of contract till payment (Article 51 paragraph 3)
 - uses the credit card that the consumer uses to pay for agreed product or service in a deceitful way (Article 52)
 - the trader fails to inform the consumer according to the provisions of Article 62, paragraphs 2 and 3;
 - the trader makes it impossible for a consumer to fulfil his or her obligations from the consumer credit contract before maturity or to realise a proportional reduction of the total costs of the credit (Article 64);
 - the trader fails to adhere to provisions of Article 70;
 - the trader leaves advertising messages and materials on the doorsteps of consumers' houses or apartments or in mailboxes which have a notice clearly stating that advertising is forbidden (Article 90, paragraph 4);
- (2) A natural person in charge of a legal person of the trader and advertiser shall be fined for violations listed in paragraph 1 of this Article a fine between 1,000 and 3,000 kuna.

Article 112

- (1) A legal person – trader shall be fined between 50,000 and 100,000 kuna for selling a product without a declaration or with a declaration that does not contain all the information specified in Article 18, paragraphs 1, 2 and 3, Article 18, paragraph 3 of this Act.
- (2) A natural person responsible within a legal person of the trader or advertiser shall be fined for violations listed in paragraph 1 of this Article a fine between 1,000 and 3,000 kuna.

CHAPTER VII

TRANSITIONAL AND FINAL PROVISIONS

Article 115

- (1) The Minister of the Economy shall pass the regulations contained in Article 60, paragraph 8 and Article 102 paragraph 4 of this Act within three months of the date this Act comes into force.
- (2) The Government of the Republic of Croatia shall establish the Consumer Protection Council referred to in Article 99 of this Act at the latest by 31 December 2003.
- (3) Until the regulations specified in Article 17 of this Act are adopted, subordinate legislation adopted pursuant to Articles 41 and 42 of the Standardisation Act (Official Gazette No 55/96) shall apply unless they are contrary to this Act.

Article 114

As of the first day of the application of this Act, the following provisions shall be repealed:

- the provisions of Articles 10 to 19, Article 32 and the penal provisions relating to economic offences and violations from the stated Articles of the Trade Act (Official Gazette no. 53/91 and 77/92 and 26/93);

- provisions contained in Articles 41 and 42 of the Act on Standardisation (Official Gazette no. 55/96).

Entry into force

Article 115

This Act shall enter into force on the eighth day after publication in the "Official Gazette" and shall apply after the ninetieth day of publication.