

## International Round Table Financial Consumer Protection

22 September 2011, Kyiv

### Legislative basis

- CR has been EU member since May 2004, therefore the consumer protection legislation represents implementation of EU directives:
  - 94/19/EC – deposit guarantee schemes
  - 93/13/EEC – unfair contract terms
  - 2005/29/EC - unfair commercial practices
  - 2002/65/EC - distance marketing
  - 2004/39/EC - MiFID
  - 2002/92/EC - IMD
  - 2008/48/EC – consumer loans

Enforcement rules (remedial measures, penalties) fall within the national remit

- Deposit protection in banks and investor compensation arrangements
  - Introduced in 1998 for natural and legal private persons' deposits in banks, since 2004 in investment firms
  - Deposit guarantee fund for banks was established by law and is pre-financed by contributions from banks (0,04 % of insured deposits quarterly, decreased, if money in fund reaches 1,5 % of insured deposits), max. compensation EUR 100.000
  - Guarantee fund for investment firms – contributions from firms 2 % of fees and brokerage yearly, max. compensation EUR 20.000
  - Non-payment of contributions to funds is shortcomings in activity and could be penalized by the supervisor
  - Non-payment from the fund to the customers is law breaking and could be suited at the general court

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- Unfair contract term in not individually negotiated contracts (mainly pre-formulated standardized contracts) - if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.
- Examples of unfair terms in financial sphere:
  - irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract
  - enabling the seller or supplier to alter unilaterally without a valid reason any characteristics of the product or service to be provided
  - excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions.

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- Unfair contract terms are invalid according to the civil law, but the consumer must approach the provider to acknowledge the invalidity, if provider disapproves, he must seek the court decision
- As part of the private contract the prohibition of these terms in consumer contracts cannot be publicly supervised
- Position of the CNB as a reputable financial market supervisor gives a chance to express an opinion of invalidity of such terms in the General Business Terms [GBT] of banks and the opinion is mostly followed
- In each case a possible conflict between consumer protection and prudential aspects in the bank's activity must be considered
- The other conflict is between the necessity to treat all the possible risks [mainly legal risks] in GBT and the extent and comprehensibility of GBT for average consumer

- A commercial practice shall be unfair if it is contrary to the requirements of professional diligence and it materially distorts or is likely to materially distort the economic behavior with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers. The directive sets mainly misleading and aggressive practices.
- In financial market most problems are with misleading, incomplete or incorrect information on the characters and terms of the products in written materials and more often in oral presentations of intermediaries - problems to prove it.
- Sometimes also correct information on the provider or intermediary and its seat and other identification is omitted

- Aggressive practices:
  - in insurance segment – asking for more documents for insurance benefits
  - In banking and insurance intermediation - disproportionate non-contractual barriers imposed by the trader where a consumer wishes to exercise rights under the contract [connecting termination of the insurance contract with penalty, limit the right to complain with setting fees for each complain assessed as non-right by the provider]
  - In capital market – aggressive offering of services, repeated calls not wished by the consumers, churning [extensive trading with consumers' papers not for his benefit but for getting trading fees]

- Next to the prohibition of unfair commercial practices CNB supervises as per the Consumer Protection Act the prohibition of discrimination and obligation of full information on services' prices.
- Examples:
  - Discrimination on nationality or citizenship and on age in banking and insurance for prudential reasons
  - Price information in banking sometimes problematic due to tying products or bundling, now it's slowly improving
  - Biggest problem with price information in insurance segment - price of life insurance products linked with investments

- Competences of the supervisor:
  - Getting all information and materials required
  - Carrying out on-site inspections
  - Require remedial actions
  - Impose penalty [up to EUR 200 000]
  - Stop activity of the provider - taking away the license
- Experience
  - Rarely problems with materials and replies [penalty possibility for non-collaboration up to EUR 40 000]
  - Remedial actions were required either voluntarily or within administrative proceeding [in such case connected with reasonable penalty], till now most improvements were reached without penalties / quicker and better for consumers

- Distance marketing directive is implemented into civil law and contains mainly information obligations. Its fulfillment could be enforced by the supervisor only through acts which regulate the activities of financial institutions and stipulate breaking of any law as a shortage in activity. Due to necessity to identify the client as per AML regulation, pure distance marketing is not used fully and we don't meet problems
- Regulation of consumer credits is valid since January 2011 and CNB supervises the banking providers only. We register problems with interpretation of advertisement requirements and explanation requirements. In the meantime all shortages were settled voluntarily by banks. Enforcement prerequisites in the act are similar to those of Consumer Protection Act.

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