



# IS THE PROTECTION OF CONSUMER RIGHTS ENSURED

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## SUMMARY

### The Importance of the Audit

Each natural person is a consumer, because in order to meet his/hers needs, he/she buys goods and services. In 2018, Lithuanian household expenditure was 63% of the country's GDP<sup>1</sup>.

The defence of consumer rights is a constitutional obligation of the state<sup>2</sup>. The EU legislation also establish an obligation to ensure high-level protection of consumers rights. The state, while implementing the obligation to ensure protection of consumer rights, has to take-up all the necessary means in order to achieve the aforementioned goal: determine the proper legal regulation and create the institutional system.

In the EU Member States, the Consumers Condition Scoreboard, which is based on survey results and published every two years, shows the systemic condition of the consumer rights protection<sup>3</sup>. Three main consumer rights protection dimensions are evaluated in accordance to it: knowledge and trust, compliance and enforcement, complaints and dispute resolution. In Lithuania, the condition of consumer rights protection is evaluated at a lower level than the EU's average: Lithuania is rated the 24<sup>th</sup> among 28 EU Member States.

The consumers are not satisfied with the protection of the following rights:

- Right to the protection of economic interests;

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<sup>1</sup> Eurostat data, see

<https://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tec00009&language=en>

<sup>2</sup> Article 46 (5) of the Constitution

<sup>3</sup> Consumers Condition Scoreboard value is measured from 0 to 100.

- Right to appeal to authorities for the settlement of disputes regarding the defence of the violated rights and the right to the defence of violated rights and redress of damage;
- Right to obtain information about the procedure for enforcing and protecting of consumer rights.

A particular attention should be paid to the protection of these rights. Only those consumers, who are aware of their rights, may actively participate in the market and properly exercise the rights of consumers. They may choose the goods and services, which best match their needs, only when objective information, which does not mislead or distort their economic behaviour, is provided. The trust in the consumers rights protection system is also determined by fast and competent resolution of consumers and sellers (service providers) disputes.

The Ministry of Justice has been entrusted with shaping the state policy in the area of consumers rights protection, as well as coordinating and controlling its implementation<sup>4</sup>. State Consumer Rights Protection Authority coordinates<sup>5</sup> the implementation of state policy in the area of consumers rights protection and implement it together with other state and municipal institutions, as well as consumer associations. The state does not calculate and does not know how much state budget funds were used for the protection of consumers rights.

In order to evaluate which are the reasons that determine the shortfalls of the protection of consumers rights and which are the means and ways to ensure high level protection of consumer rights, *we decided* to perform the audit of the protection of consumers rights.

## The Objective and Scope of the Audit

The objective the audit is to evaluate whether the protection of the rights of consumers is ensured.

The main issues of the audit:

- Whether effective means are taken-up in order to ensure the consumers right to the protection of economic interests;
- Whether effective defence of the consumers rights to the out-of-court consumer dispute resolution is ensured;
- Whether the consumers have sufficient information about the procedure on how to exercise and defend their rights.

The audited entities:

- The Ministry of Justice, to which the shaping of the state policy in the area of consumers rights protection, as well as coordinating and controlling its implementation, has been entrusted;

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<sup>4</sup> Article 10 Part 2 Points 1 and 2 of the Law on Consumer Protection

<sup>5</sup> Ibid, Article 12 Part 1 Point 2

- State Consumer Rights Protection Authority, to which the coordination of the activity of consumer rights protection institutions in the area of the protection of consumer rights has been entrusted.

We have also gathered information from the institutions, that are responsible for out-of-court resolution of consumer disputes, Competition Council and other state institutions, which performed certain functions in the area of consumer rights protection, as well as municipal administrations and consumer associations. During the audit, we interviewed the representatives of Seimas Committee on Human Rights, consumer associations (Lithuanian National Consumer Federation, Lithuanian Consumer Institute, Alliance of Lithuanian Consumer Organizations, Lithuanian Association of Bank Customers) and academic community.

The period being audited: 2015-2018.

During the 2018 audit “Is the Lithuanian Business Monitoring System is Effective”, the institutions performing the market supervision, which should ensure the consumer rights to acquire safe, good quality goods and services, were also evaluated. When implementing the audit recommendations, the business monitoring system was reorganised. The implementation of this reform will be evaluated in 2019 upon performing the audit “The Consolidation of Institutions Responsible for Supervision of Activities of Economic Operators”, therefore, during this audit, we did not evaluate the issues relating to the market supervision.

The audit was performed in accordance to the Public Auditing Requirements<sup>6</sup> and international standards of supreme audit institutions<sup>7</sup>. The scope of the audit and applied methods are more thoroughly described in Annex 1 “The Scope and Methods of the Audit” (page 44).

## The Main Results of the Audit

The consumer rights protection system does not always meet the expectations of consumers and does not ensure sufficiently effective protection of their rights. The gaps in legal regulation and insufficient coordination of consumer rights protection policy does not ensure that the institutions would take-up effective means to protect the rights of consumers.

### 1. The Protection of Economic Interests of Consumers Should be Improved

The preventive means performed by the State Consumer Rights Protection Authority and Competition Council (monitoring and evaluation of draft standard terms and conditions of consumer contracts) did not ensure, that the information about the goods and services offered for sale, which the sellers and service providers provide to consumers, would not be misleading and the conditions of the offered contracts would be consumer friendly

<sup>6</sup> Order of the Auditor General of 21-02-2002 No. V-26 “Regarding the Approval of the Public Auditing Requirements”.

<sup>7</sup> ISSAI 3000 Standard for Performance Auditing.

and not would not infringe their interests. The number of consumers that encountered misleading advertisements increased by 4 percentage points (from 30 to 34%) and the share of other unfair commercial activity increased by 1 percentage point (from 11 to 12%) in 2018, when compared to 2016<sup>8</sup>.

### Insufficient Preventive Activity

The scopes of the performed monitoring of the economic entities are too little to have significant affect in order to determine unfair actions of sellers and service providers. During the period of 2015-2018, the monitoring was performed in seven (out of 13) areas after selecting 0.5% of economic entities (460 out of 100 thousand operating in Lithuania). In four years, no monitoring was performed in the following six areas: insurance and financial services; restaurants and hotels; furnishings; household equipment and everyday home maintenance; food and non-alcoholic beverages; alcoholic drinks and tobacco. Because of this, it was not monitored whether the economic entities carrying-out their activities in the aforementioned areas comply with the set requirements and not mislead the consumers. When planning the monitoring, the selection of consumer areas and economic entities acting therein was not based on risk assessment.

The consumers cannot be sure, that the standard conditions, set out in the contracts concluded with sellers and service providers, which are not individually discussed with the consumers when concluding a contract, will be honest and will not infringe their rightful interests.

The law does not lay down an obligation for the sellers and the service providers to evaluate the prepared typical draft consumer contracts, which are concluded with a large number of consumers. Because of this, unfair contractual terms and conditions are found when the contracts have already been concluded and the consumers experience their negative affect.

### The Established Infringements are not always Made Public and Rapidly Eliminated

The decisions of the State Consumer Rights Protection Authority, by which the sellers and service providers are obligated to amend, repeal or not to apply the contractual terms and conditions, which were deemed unfair, are recommendatory. When the decisions are not implemented, the elimination of consumer rights infringements on average extend to 14 months, until the court resolves the issue of consumer right protection. In 2017, compared to 2015, the number of non-implemented decisions increased three times.

Each case of misleading advertisement, unfair conditions of the consumer contracts and other unfair commercial activity distorts the behaviour of a large number of consumers and may cause them damage. However, the institutions did not make public 68% (128 out of 189) of the established facts of infringements, therefore, the consumers, who may have incurred damages due to the established infringements, did not receive information in order to be able to demand redress of the damage (Chapter 1).

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<sup>8</sup> Representative Lithuanian population survey "Consumer Rights", 2018, page 23.

## 2. After Improving the System of Out-of-Court Resolution of the Consumer Disputes, the Infringed Rights of the Consumer Would be more Effectively Defended

A consumer presuming that a seller, service supplier has infringed his/her rights or lawful interests, has the right to apply to the bodies for settlement of consumer disputes following the out-of-court procedure or the court in order to defend his/her rights<sup>9</sup>.

The out-of-court settlement of consumer disputes, in comparison to the judicial settlement, is a rapid and simpler method to defend the rights of the consumers. Properly operating out-of-court dispute settlement system could also help reduce the scope of judicial litigations. Therefore, it is important for the state to ensure fast and competent dispute settlement.

The institutional system for out-of-court settlement of consumer disputes should be reorganized, after having evaluated the scope of emerging disputes in separate consumer areas and the expert knowledge of the institutions.

### Not all the Consumer Disputes are settled within the Period Set by Law

Six institutions are entrusted with the settlement of consumer disputes. During the period of 2016-2018, 14 thousand consumer applications concerning the settlement of disputes were received. Five institutions (Bank of Lithuania, Communications Regulatory Authority, National Energy Regulatory Council, State Energy Inspectorate and Lithuanian Bar), responsible for the settlement of consumer disputes in the sectors relating to the activities they perform, received 16% (2,292) of all the applications, and have examined 92% of them within the 90 days period set by law.

State Consumer Rights Protection Authority, which is responsible for the settlement of disputes arising in all the other sectors of consumer rights protection, has examined 84% (12,030) of disputes, out of which only about half of disputes (56%) were examined within the required 90 days period. This was influenced by the fact that the State Consumer Rights Protection Authority, unlike the institutions, which settle the disputes according to their sectors, does not always have the expert knowledge necessary to examine the disputes in certain areas. In such cases, the Authority examines them, in principle, only after receiving the evaluations from the competent institutions submitted at the request of the Authority on the issues of the dispute.

### There are no Suitable Legal Prerequisites in place to Defend the Consumer Rights

The Law on Consumer Protection does not define, who (the consumer or dispute settlement institution) should buy expertise and laboratory testing, which results are necessary for dispute resolution. In those cases, when consumers refused to buy them, the dispute settlement was discontinued, by substantiating that without the expert's conclusion it is impossible to examine the dispute and adopt a decision.

The free-of-charge dispute resolution does not motivate the sellers and service providers to satisfy the substantiated demands of the consumers, until they have addressed the dispute settlement institutions. In accordance to the information provided by the

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<sup>9</sup> Article 20 (2) of the Law on Consumer Protection

institutions, within 3-year period 4 million euros were spent for out-of-court consumer dispute resolution. If a possibility to recover the dispute resolution costs from the sellers and service providers in the event when it is deemed that they have infringed the consumer rights were enshrined in the law, based on our calculations, it would have been possible to recover approximately 700 thousand euros of state budgeted funds.

The legal power of the decisions adopted by the consumer dispute settlement institutions is uneven. The decisions of five institutions (State Consumer Rights Protection Authority, National Energy Regulatory Authority, State Energy Inspectorate, Communications Regulatory Authority and Lithuanian Bar) have the power of the executive document, while the decisions of one institution (Bank of Lithuania) are of recommendatory nature. Therefore, the consumers cannot submit the decisions of the Bank of Lithuania to the bailiff for their forced execution.

### There Is a Lack of Data to Assess the Effectiveness of the Out-of-Court Consumer Dispute Settlement System

Three dispute settlement institutions - State Consumer Rights Protection Authority, Communications Regulatory Authority and State Energy Inspectorate - does not obligate the sellers and service providers to inform whether the decisions regarding the elimination of consumer rights infringements were implemented, therefore, they do not have credible data about how many decisions were implemented. The courts as well do not systematize the data about how many times the court was applied regarding a dispute, which has already been settled out-of-court. Therefore, the Ministry of Justice does not have the possibility to assess the effectiveness of the out-of-court dispute settlement system and purposefully improve it (Chapter 2).

## 3. Consumers Lack Knowledge about their Rights, their Execution and Defense Procedure

The consumer rights awareness in 2018, compared to 2016, decreased by 4 points (from 25 to 21)<sup>10</sup>.

### It is not Specifically Provided who should Organize the Education of Consumers

The Law on Consumer Protection sets out that state and municipal institutions should organize the education of consumers, however, neither this Law, nor other legal acts provide specifically which institutions are responsible for performing this function. In 2018, 91% (39 out of 43 that provided the information) of municipalities administrations did not organize education, reasoning it, that the Law on Local Self-Government did not vest to them such a function.

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<sup>10</sup> Representative Lithuanian population survey "Consumer Rights", 2018.

## The Need for Consumer Education is not Known

In 2015, four consumer education areas, in which the consumers lack knowledge, were identified<sup>11</sup>. These areas have not been revised for four years, therefore, it is not known whether they are still relevant for consumers.

93% of state institutions<sup>12</sup> organized consumer education without having relevant information on which knowledge the consumers lack and did not take-up means in order to identify the consumer groups, which in particular lack information. Such information was not received from State Consumer Rights Protection Authority either - institution coordinating education of consumers.

## The Effectiveness of the Implemented Consumer Education Measures is not Evaluated

In accordance to the data submitted by the institutions, in 2018, they implemented approximately 9 thousand of consumer education measures: these are announcements on websites, consultations, participation in TV or radio broadcasting, answers to mass media, information publications, thematic announcements, seminars and trainings. It was not evaluated whether these measures helped increase the awareness of consumers.

Neither the State Consumer Rights Protection Authority, nor the Ministry of Justice has the systematic information about the planned and performed by institutions consumer education measures and their effectiveness. Without having such information, there is no possibility to properly shape the consumer education policy and coordinate the delivery of consumer education.

## Insufficient Role of Consumer Associations

In Lithuania, unlike in other EU Member States, the key role in consumer education is played not by the consumer associations, but by the state institutions. The measures envisaged in the strategy aimed at setting out the prerequisites for increasing the role of consumer associations in the consumer education, were not implemented, therefore, the potential of the associations is not used (Chapter 3).

## Recommendations

### For the Ministry of Justice

1. In order to ensure effective protection of consumer rights, it is necessary to effectively shape and implement state policy in the area of consumer rights protection, therefore, we propose, in cooperation with other ministries responsible for the regulation of certain consumer areas:

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<sup>11</sup> State Consumer Rights Protection Strategy for 2015-2018, approved by the Government Decree No. 281 of 18-03-2015.

<sup>12</sup> State Food and Veterinary Service, State Energy Inspectorate, State Territory Planning and Construction Inspectorate, State Medicines Control Agency, Lithuanian Transportation Safety Administration, Lithuanian Metrology Inspectorate, State Data Protection Inspectorate, Drug, Tobacco and Alcohol Control Department, National Public Health Center, State Consumer Rights Protection Authority, Competition Council, Communications Regulatory Authority, Bank of Lithuania, National Energy Regulatory Authority.

- 1.1. To ensure, that the effectiveness of the activity of institutions responsible for the protection of consumer rights would be evaluated periodically and information necessary for shaping state policy in the area of consumer rights protection would be controlled (audit results 1, 2, 3);
- 1.2. To determine which state and municipal institutions should be responsible for the organization of consumer education and ensure that the activity of these institutions when organizing the education of consumers would be coordinated (audit result 3);
- 1.3. To establish the cooperation methods and forms between the state and municipal institutions, and consumers (audit result 3).
2. In order to create more favorable conditions to protect and defend the infringed rights of the consumer, as the weaker party to the consumer contract:
  - 2.1. To determine, that all of the decisions of the consumer rights protection institutions, as a result of the implementation of which the infringed consumer rights would be defended, would have the power of the executive document (audit results 1, 2);
  - 2.2. To establish, which standard conditions of the typical draft consumer contracts should be coordinated with the institutions ensuring the protection of consumer rights (audit result 1);
  - 2.3. To determine, that all of the infringements identified by the consumer rights protection institutions would be made public and information necessary for the consumers be published in order for them to be able to implement their right to defence of their infringed rights and redress of monetary and moral damage (losses) (audit result 1).
3. In order to make the out-of-court consumer dispute resolution system more effective and to establish that the disputes would be settled in a competent manner and within the periods determined by the law:
  - 3.1. To reshape the institutional system of out-of-court consumer dispute resolution, by having regard to the number of disputes stemming in certain consumer areas and the competences of institutions to examine these disputes (audit result 2);
  - 3.2. To motivate the sellers and service providers to satisfy the substantiated demands of consumers in order to recover the dispute resolution costs from the sellers and service providers, who have infringed the rights of consumers (audit result 2);
  - 3.3. To determine, who (consumer, businessperson or dispute resolution institution) and in which cases, should initiate the required expertise and laboratory testing, and pay for it (audit result 2).

#### For the State Consumer Rights Protection Authority

4. In order to protect the right of consumers to the protection of economic interests and to manage the risk of unfair actions of sellers and service providers, to strengthen

the preventive activity, by ensuring, that risk assessment of all the consumer areas and economic entities would be carried out while planning the monitoring of unfair actions of sellers and service providers and that the scope of monitoring would allow to reach the goals of monitoring (audit result 1).

5. In order to increase the consumer awareness, to prepare the guidelines for institutions responsible for consumer education, providing for the ways of identification of consumer needs, planning the education measures, and evaluating the effectiveness of the implemented education measures.

The measures for implementing the recommendations and their deadlines are provided in the report section “The Plan for Implementing the Recommendations”.