

ACT AMENDING THE CONSUMER PROTECTION ACT (ZVPot-F)

Article 1

Article 1 of the Consumer Protection Act (*Uradni List RS* (UL RS; Official Gazette of the Republic of Slovenia) No 98/04 – official consolidated text, 46/06 – Constitutional Court Decision, 126/07, 86/09, 78/11) shall be amended to read:

‘This Act governs the rights of consumers in the offering, selling and other forms of marketing of goods and services by enterprises, and sets out the obligations of state bodies and other entities in guaranteeing these rights.

Under this Act, ‘consumer’ means a natural person who obtains or uses goods and services for purposes outside his professional or gainful activities.

Under this Act, ‘enterprise’ means a legal entity or natural person that engages in a gainful activity regardless of their legal-organisational form or ownership.

The obligations imposed by this Act on enterprises shall also apply to institutions and other organisations or other natural persons that provide consumers with goods and services.

Under this Act, goods shall be considered to be all movable items, with the exception of items sold as part of execution or other judicial proceedings. Water, gas and electricity shall also be considered to be goods when they are put up for sale in a limited volume or a set quantity, as shall digital content.

Under this Act, goods made to the consumer’s specifications shall be considered to be non-prefabricated goods made on the basis of an individual choice of or decision by the consumer.

Under this Act, digital content shall be considered to be data produced and supplied in digital form.

‘Durable medium’ means any medium which enables the consumer to store data or information addressed to him, is permanently accessible and allows for reproduction.

‘Issuer of a guarantee’ means an enterprise that issues, offers or advertises guarantees.

A distributor of a product not manufactured in the Republic of Slovenia shall be considered to be an enterprise which places the product on the market in the Republic of Slovenia as the first enterprise in the distribution chain.

Under this Act, ‘manufacturer’ means an enterprise that produces finished products or components, or acquires basic raw materials, or a person that presents themselves as the manufacturer by means of a registered business name, trademark or other distinguishing marks on the product. An importer and distributor of a product, the representative office of a manufacturer in the Republic of Slovenia or any other person that gives the appearance of being the manufacturer by marking goods with its name, trademark or other distinguishing marks shall also be considered to be a manufacturer.

An importer of a product shall be considered to be anyone who imports a product into the customs zone of the European Community.

Under this Act, ‘information society services’ means those economic activities that are carried out via the worldwide web/internet, including the sale of goods and services on the basis of the conclusion of contracts via the worldwide web/internet and free services, such as the provision of data and commercial advertisements, except where stipulated otherwise in this or another act.

Under this Act, 'provider of information society services' means any enterprise that provides the services referred to in the preceding paragraph.

Under this Act, 'financial services' means services that are the subject of the acts governing banking, insurance, the market in securities of investment funds, pension funds, payment transactions and consumer loans.

'Travel organiser' means an enterprise that organises packages and sells or offers them for sale, whether directly or through a retailer. A retailer that sells a package put together by a travel organiser that does not have a registered office in the Republic of Slovenia shall be considered to be a travel organiser.

'Retailer' means an enterprise that sells or offers for sale a package put together by a travel organiser.

'Agent' means an enterprise that undertakes by contract, in the name and on behalf of a consumer, to purchase a package or one or more tourist services enabling the specified travel to take place.

Under this Act, a 'sales contract' means any contract under which an enterprise undertakes to transfer the ownership of goods which it sells to the consumer, who thereby acquires the right of ownership, and the consumer undertakes to pay the purchase price of the goods to the enterprise. Under this Act, any contract having as its object both goods and services shall be considered to be a sales contract.

Under this Act, 'service contract' means any contract, other than a sales contract, under which an enterprise undertakes to supply a service to a consumer and the consumer undertakes to pay the price specified for the service.

Under this Act, 'means of distance communication' means those means of communication which enable a contract to be concluded without the simultaneous physical presence of the contracting parties. These means include, in particular: letters and other printed matter, catalogues, telephone conversations, press advertising with an order form, teleshopping, facsimile machines, electronic mail and the worldwide web/internet.

Under this Act, 'business premises' means any immovable retail premises where an enterprise carries out its activity on a permanent basis or any movable retail premises where an enterprise carries out its activity on a usual basis.

Under this Act, 'timeshare contract' means any contract concluded for more than one year under which the consumer, against payment of a fee, acquires from an enterprise the use of immovable and movable property that provides a consumer with overnight accommodation for more than one period of use. Due regard shall be paid to every provision of the contract that permits it to be renewed or otherwise extended when calculating the duration of a timeshare contract.

Under this Act, 'long-term holiday product contract' means any contract concluded for more than one year under which the consumer, against payment of a fee, acquires from an enterprise among other things the right to discounts or other favourable terms for accommodation, separately or together with travel and other services. Due regard shall be paid to every provision of the contract that permits it to be renewed or otherwise extended when calculating the duration of a timeshare contract.

Under this Act, 'resale contract' means any contract under which an enterprise assists a consumer in the sale or lease of a timeshare or a long-term holiday product against payment of a fee.

Under this Act, 'exchange contract' means any contract under which a consumer is included in an exchange scheme, against payment of a fee, that provides him with overnight accommodation or other services in exchange for which the consumer temporarily permits other persons to enjoy the rights under his timeshare contract.

Under this Act, ‘ancillary contract’ means any contract under which a consumer acquires the right to services related to a timeshare contract or long-term holiday product contract, where those services are provided by the enterprise or by a third party on the basis of an agreement between that third party and the enterprise, or a contract under which a consumer acquires goods or services related to a distance contract or an off-premises contract, where those goods are supplied or those services provided by the enterprise or by a third party by agreement with the enterprise.

Under this Act, ‘public auction’ means a method of sale by which goods or services are provided by an enterprise to consumers who attend or are given the option of attending the auction in person, through a transparent, competitive procedure run by an auctioneer, where the successful bidder is bound to purchase the goods or services.

The rights enjoyed by a consumer under this Act shall not affect the rights enjoyed by a consumer under general regulations on obligational relations.

The rights enjoyed by a consumer under this Act may not be limited or waived by contract’.

Article 2

Point 2 of Article 1a shall be amended to read:

‘2. Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L No 304 of 21 November 2011, p. 64).’.

Point 8 shall be deleted.

The previous points 9 to 14 shall become points 8 to 13.

Article 3

New Articles 25a, 25b, 25c, 25č and 25d shall be inserted after Article 25, reading:

‘Article 25a

An enterprise shall meet its obligations under a sales contract by transferring actual possession or control of the goods to the consumer. If the time of delivery is specified in the contract, the enterprise shall meet its obligations without undue delay, but not later than 30 days from the conclusion of the contract, unless the parties agree otherwise.

Where the enterprise has failed to meet its obligation under the preceding paragraph by the deadline agreed or by the deadline referred to in the preceding paragraph, it shall determine an appropriate additional period of time in which to fulfil the contract. If the enterprise fails to meet its obligations by that additional deadline, the consumer shall be entitled to withdraw from the contract.

Without prejudice to the provision of the preceding paragraph, a consumer may withdraw from a contract after the agreed deadline or the deadline referred to in the first paragraph of this Article has expired without giving the enterprise an additional deadline by which to meet its obligations, if:

- the enterprise refuses to deliver the goods;
- delivery by the agreed delivery deadline is an essential component of the contract, taking into account all the circumstances attending the conclusion of the contract;

– or the consumer informs the enterprise, prior to the conclusion of the contract, that delivery by the agreed deadline is an essential component of the contract.

If the consumer withdraws from the contract, the enterprise shall, without undue delay, reimburse all sums paid.

Article 25b

An enterprise shall provide the following information to a consumer in a clear and comprehensible manner if that information is not already apparent from the context before the consumer concludes or is bound by the contract:

1. the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;
2. the enterprise's registered business name, registered place of establishment and telephone number, if available;
3. the final price of the goods or services, inclusive of taxes, or the manner in which the price is to be calculated if the nature of the goods or services is such that the price cannot be calculated in advance;
4. all additional freight, delivery or postal charges or, where those charges cannot be calculated in advance, the fact that such additional charges may be payable;
5. the conditions applying to payment, delivery and provision of the service, and the deadline for delivery of the goods or the provision of the service, where applicable;
6. the enterprise's complaint handling procedure;
7. an indication of liability for material defects;
8. the existence and conditions of after-sales services and voluntary guarantees, where applicable;
9. the duration of the contract, where applicable, and the conditions for withdrawing from a contract of indeterminate duration or a contract that is to be extended automatically;
10. where applicable, the functionality, including applicable technical protection measures for digital content;
11. any relevant interoperability of digital content with hardware and software that the enterprise is aware of or should be aware of.

The provision of the preceding paragraph shall also apply to contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating, or of digital content which is not supplied on a durable medium.

The provision of the first paragraph of this Article shall not apply to contracts that involve day-to-day transactions and are performed immediately at the time of their conclusion.

Article 25c

The risk of loss of or damage to dispatched goods shall pass from the enterprise to the consumer when he or a third party indicated by the consumer and other than the carrier has acquired physical possession of the goods.

Where the carrier was commissioned by the consumer to carry the goods and that choice was not offered by the enterprise, the risk of the destruction of and damage to the goods shall, without

prejudice to the preceding paragraph, pass to the consumer upon delivery to the carrier, without prejudice to the rights of the consumer to choose a carrier.

Article 25č

Prior to concluding a consumer contract, the entrepreneur shall obtain the consumer's explicit consent on any additional amount due, apart from the price.

If the enterprise has acquired the consumer's express consent as referred to in the preceding paragraph by using default options which the consumer is required to reject in order to avoid additional payment, the consumer shall be entitled to reimbursement of the additional payment.

Article 25d

Where an enterprise operates a telephone number for the purpose of communicating with the consumer in relation to the contract concluded, it may not charge more than the basic rate for a telephone call on this number as charged by the telecommunications operator'.

Article 4

A new Article 27b shall be inserted after Article 27a, reading:

'Article 27b

The costs which a payment recipient charges to a consumer for using a specific payment instrument may not exceed the actual costs incurred by the payment recipient in using this instrument'.

Article 5

In Chapter VI, the title of Sub-Chapter 4b, 'Distance contracts', shall be amended to read: 'Distance contracts and off-premises contracts'.

Article 6

Articles 43, 43a, 43b and 43c shall be amended to read:

'Article 43

Under this Act, 'distance contract' means a contract concluded between an enterprise and a consumer under an organised distance sales or service-provision scheme, without the simultaneous physical presence of the contracting parties, and run by the enterprise which, for the purpose of concluding the contract, uses exclusively one or more means of distance communication up to and including the time at which the contract is concluded.

Under this Act, an 'off-premises contract' means a contract between an enterprise and a consumer:

1. concluded in the simultaneous physical presence of the enterprise and the consumer outside the enterprise's business premises;
2. for which an offer was made by the consumer under the same circumstances as referred to in the preceding point;
3. concluded on the enterprise's business premises or through any means of distance communication immediately after the consumer was personally addressed by the enterprise in a place which is not the

enterprise's business premises and in the simultaneous physical presence of the enterprise and the consumer;

4. concluded during an excursion organised by the enterprise with the aim or effect of promoting and selling goods or services.

Article 43a

The provisions of this Sub-Chapter shall not apply to:

1. contracts for the construction or sale of immovable property, the transfer of other rights to immovable property and the substantial change to the purpose of buildings, and to rental contracts for residential purposes;

2. contracts for social services, social housing and childcare provided by the state, by providers authorised by the state or by charity organisations recognised by the state, where such services provided by private providers that do not have authorisation from state bodies shall not be subject to this exemption;

3. contracts for healthcare and pharmacy activities, in accordance with the regulations governing healthcare;

4. gambling contracts;

5. financial services contracts;

6. holiday package contracts;

7. timeshare contracts;

8. contracts concluded with a public office-holder with a statutory obligation to be independent and impartial when providing information;

9. contracts for the sale of foodstuffs, beverages or other goods intended for everyday consumption which are delivered to a consumer by an enterprise on frequent and regular rounds to the consumer's home, residence or workplace;

10. passenger transport contracts, with the exception of the provisions of the second and third paragraphs of Article 43c;

11. contracts concluded by means of automatic vending machines or in business premises equipped with automatic vending machines;

12. contracts concluded with telecommunications operators through public payphones for their use or for the use of a single connection by telephone, internet or fax established by a consumer.

The provisions of this Sub-Chapter shall not apply to off-premises contracts if the sum of all payments which the consumer is obliged to make pursuant to the contract is less than EUR 20.

Article 43b

Before the consumer is bound by a distance or off-premises contract or offer, the consumer shall receive the following information, in addition to the information referred to in the first paragraph of Article 25b of this Act:

1. the address from which the enterprise actually operates, the telephone number, fax number and e-mail address, where available, and, where applicable, the registered business name and registered

place of establishment of the enterprise on behalf of which it is acting and to which the consumer may address any complaints;

2. the registered place of establishment of the enterprise, if different from the address referred to in the preceding point, and, where applicable, the address of the enterprise on behalf of which it is acting and to which the consumer may address any complaints;

3. the costs connected with using the means of communication, if those costs differ from the basic rate;

4. the conditions, deadlines and procedures for exercising the right to withdraw from the contract in accordance with Articles 43č and b43d of this Act, together with the withdrawal form referred to in the fifth paragraph of Article b43d;

5. a reminder that the consumer shall cover the costs of returning goods in the event of withdrawal from the contract, where applicable;

6. the costs of returning the goods if, in the case of distance contracts, the goods, by their nature, cannot be returned by post;

7. the costs that the consumer is obliged to pay the enterprise in accordance with the first paragraph of Article a43e of this Act if he withdraws from the contract after submitting a request in accordance with the seventh paragraph of Article 43c or the third paragraph of Article a43č of this Act;

8. the absence of the right of withdrawal from the contract if the consumer, in accordance with the fifth paragraph of Article 43č of this Act, does not have the right of withdrawal or, where applicable, the circumstances under which the consumer loses his right of withdrawal from the contract;

9. the existence of codes of conduct and information on where these codes of conduct may be obtained;

10. the minimum duration of the consumer's obligations under the contract, where applicable;

11. the possibility of having recourse to out-of-court dispute resolution and other means of legal redress to which the enterprise is subject, and the methods for accessing such means, where applicable.

The preceding paragraph shall also apply to contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating, or of digital content which is not supplied on a tangible medium.

In contracts of indeterminate duration or contracts that include an order form, the final price shall include the total costs for the billing period. If these costs are charged at a fixed interest rate, the total price shall also include the total monthly costs. Where the total costs cannot be calculated in advance, the enterprise shall state the method used to calculate the price.

In the case of sales by public auction, the information on the enterprise as referred to in points 1 and 2 of the first paragraph of this Article and point 2 of the first paragraph of Article 25b may be replaced by details on the auctioneer.

The information referred to in the first paragraph of this Article shall be a constituent part of the contract and may only be subsequently amended with the express consent of the contracting parties.

An enterprise may provide a consumer with the information referred to in points 4, 5, 6 and 7 of the first paragraph of this Article using the form referred to in the ninth paragraph of this Article. An enterprise shall be considered to have provided a consumer with the information referred to in points 4, 5, 6 and 7 of the first paragraph of this Article if it has correctly completed the form referred to in the ninth paragraph of this Article and sent it to the consumer.

If the enterprise has not sent the information on additional costs referred to in points 5 and 6 of the first paragraph of this Article, the third paragraph of this Article and point 4 of the first paragraph of Article 25b of this Act, the consumer shall not be obliged to pay those costs.

The burden of proof in respect of an enterprise's obligation to inform a consumer shall rest with the enterprise.

The minister responsible for the economy shall lay down rules prescribing the form and content of the forms containing information on exercising the right of withdrawal from a distance contract or off-premises contract.

Article 43c

With respect to distance contracts, an enterprise shall give or make available to the consumer the information referred to in the first paragraph of Article 43b of this Act in a way that is appropriate to the means of distance communication and using plain and intelligible language. Insofar as that information is provided on a durable medium, it shall be legible.

Before a distance contract concluded by electronic means places the consumer under an obligation to pay, the enterprise shall make the consumer aware, in a clear and prominent manner, and before the consumer places his order, of the information referred to in points 1, 3, 4 and 9 of the first paragraph of Article 25b, and point 10 of the first paragraph and the third paragraph of Article 43b of this Act.

The enterprise shall ensure that the consumer, when placing his order under a distance contract concluded by electronic means, explicitly acknowledges that by placing the order he agrees to pay. A function that activates an order shall be labelled with the words 'order with obligation to pay' or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the enterprise. If the enterprise does not comply with the provisions of this paragraph, the consumer shall not be bound by the contract or order.

If a distance contract is concluded via a means of distance communication which allows limited space or time to display the information, the enterprise shall provide, on that particular means, at least the information referred to in points 1, 2, 3, 4 and 9 of the first paragraph of Article 25b, and point 4 of the first paragraph and the third paragraph of Article 43b of this Act before the contract becomes binding on the consumer. The other information referred to in the first paragraph of Article 43b of this Act shall be provided by the enterprise to the consumer in an appropriate way in accordance with the first paragraph of this Article.

An enterprise shall state clearly and intelligibly on its website, no later than by the start of the order procedure, whether there are any restrictions regarding delivery or the form of payment.

An enterprise shall provide a consumer with confirmation of the contract concluded, on a durable medium, within a reasonable time following the conclusion of a distance contract, and no later than by the time the goods are delivered or the service provision begins. The confirmation shall contain the information referred to in the first paragraph of Article 43b of this Act, unless the enterprise has already provided that information to the consumer on a durable medium prior to conclusion of the distance contract, as well as the consumer's consent as referred to in point 13 of the fifth paragraph of Article 43č of this Act, where applicable.

An enterprise may begin providing a service or supplying water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, and of district heating within the withdrawal period referred to in Article 43č of this Act with the consumer's express consent.'

Article 7

A new Article a43č shall be inserted after Article 43c, reading:

'Article a43č

With respect to off-premises contracts, the enterprise shall provide the information referred to in the first paragraph of Article 43b of this Act to the consumer on paper or, if the consumer agrees, on another durable medium. That information shall be legible and in plain, intelligible language.

The enterprise shall provide the consumer with a copy of the signed contract or confirmation of the concluded contract on paper or, if the consumer agrees, on another durable medium, including, where applicable, confirmation of the consumer's prior express consent regarding the start of service provision and his acknowledgement in accordance with point 13 of the fifth paragraph of Article 43č of this Act.

An enterprise may begin providing a service or supplying water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or district heating within the withdrawal period referred to in Article 43č of this Act with the consumer's express consent given on a durable medium.'

Article 8

Article 43č shall be amended to read:

'Article 43č

The consumer shall have a period of 14 days in which to inform an enterprise that he is withdrawing from a distance contract or off-premises contract without being obliged to give a reason. In so doing, the consumer shall only incur the costs referred to in the seventh paragraph of Article 43d of this Act.

In the case of sales contracts, the withdrawal period referred to in the preceding paragraph shall start:

- on the day on which the consumer, or a third party other than the carrier and indicated by the consumer, acquires actual possession of the goods;
- if the subject of the contract is multiple goods ordered by the consumer in one order, on the day on which the consumer, or a third party other than the carrier and indicated by the consumer, acquires actual possession of the last item;
- in the case of delivery of goods consisting of multiple lots or items, on the day on which the consumer, or a third party other than the carrier and indicated by the consumer, acquires actual possession of the last lot or item;
- in the case of contracts for the regular delivery of goods within a defined period of time, on the day on which the consumer, or a third party other than the carrier and indicated by the consumer, acquires actual possession of the first item of goods.

In the case of service contracts, the withdrawal period referred to in the first paragraph of this Article shall start on the day the contract is concluded.

In the case of contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or of digital content which is not supplied on a tangible medium, the withdrawal period referred to in the first paragraph of this Article shall start on the day the contract is concluded.

Unless the contracting parties agree otherwise, a consumer shall not be entitled to withdraw from a contract as referred to in the first paragraph of this Article in the case of the following contracts:

1. contracts for goods or services for which the price is dependent on fluctuations in markets which cannot be controlled by the enterprise and which may occur within the contract withdrawal period;
2. contracts for goods made to the consumer's precise specifications and adapted to his personal requirements;
3. contracts for goods which are liable to deteriorate or expire rapidly;
4. service contracts, if the enterprise has performed the contract in full and if the provision of the service has begun with the consumer's prior express consent and with an acknowledgement that he will lose his right of withdrawal once the contract has been performed in full by the enterprise;
5. contracts for the supply of sealed audio or video recordings or sealed computer software, if the consumer broke the security seal after delivery;
6. contracts for the supply of newspapers, periodicals or magazines, with the exception of subscription contracts for the supply of such publications;
7. contracts for the supply of sealed goods which are not suitable for return due to health protection or hygiene reasons, if the consumer broke the seal after delivery;
8. contracts for the supply of goods which are, due to their nature, inseparably mixed with other items;
9. contracts for the supply of alcoholic beverages, the price of which was agreed at the time the sales contract was concluded, the delivery of which can only take place after 30 days and the actual value of which is dependent on fluctuations in the market which cannot be controlled by the enterprise;
10. contracts concluded at public auctions;
11. contracts where the consumer has specifically requested a home visit from the enterprise for the purpose of carrying out urgent repairs or maintenance. If, on the occasion of such a visit, the enterprise provides services additional to those specifically requested by the consumer or delivers goods other than the replacement parts required for carrying out the maintenance or repairs, the consumer shall be entitled to withdraw from the contract in relation to those additional services or goods;
12. contracts for the provision of accommodation other than for residential purposes, the transport of goods, car rental services, food preparation and delivery and leisure services, if the enterprise undertakes to meet its obligations on a precisely defined date or by a precisely defined deadline;
13. contracts for the supply of digital content which is not supplied on a tangible medium, if the provision of the service has begun with the consumer's prior express consent and with an acknowledgement that he will thereby lose his right of withdrawal from the contract.'

Article 9

New Articles a43d and b43d shall be inserted after Article 43č, reading:

'Article a43d

If an enterprise does not provide the information to the consumer on the right of withdrawal referred to in point 3 of the first paragraph of Article 43b of this Act, the contract withdrawal period shall be 12 months. The period shall start after the expiry of the withdrawal period referred to in the first paragraph of the preceding Article.

If an enterprise provides the information to the consumer on the right of withdrawal referred to in point 3 of the first paragraph of Article 43b of this Act within 12 months of the start of the withdrawal period

referred to in the second paragraph of the preceding Article, the withdrawal period referred to in the first paragraph of the preceding Article shall begin on the day the consumer receives the information.

If an enterprise does not provide the information to the consumer on the right of withdrawal referred to in point 3 of the first paragraph of Article 43b of this Act, the contract withdrawal period shall be 12 months. The period shall start after the expiry of the withdrawal period referred to in the first paragraph of the preceding Article.

If an enterprise provides the information to the consumer on the right of withdrawal referred to in point 3 of the first paragraph of Article 43b of this Act within 12 months of the start of the withdrawal period referred to in the second paragraph of the preceding Article, the withdrawal period referred to in the first paragraph of the preceding Article shall begin on the day the consumer receives the information.

Article b43d

A consumer may submit a notice of withdrawal to an enterprise using the form referred to in the fifth paragraph of this Article or by means of an unequivocal statement to the effect that he is withdrawing from the contract.

A consumer shall be considered to have submitted a withdrawal statement on time if he sends it within the contract withdrawal period.

An enterprise may also provide a consumer with an option on its website of electronically completing and submitting the form referred to in the fifth paragraph of this Article or making an unequivocal statement to the effect that he is withdrawing from the contract. In such cases, the enterprise shall acknowledge receipt of the notice of withdrawal from the contract on a durable medium without undue delay.

The burden of proof for exercising the right of withdrawal in accordance with this Article shall be on the consumer.

The minister responsible for the economy shall prescribe the form and content of the form with a withdrawal statement'.

Article 10

Article 43č shall be amended to read:

'Article 43d

The exercise of the right of withdrawal from a contract as referred to in Article 43č of this Act shall terminate the obligations of the parties:

- to fulfil the contract,
- or to conclude the contract, in cases where the offer to conclude a contract was made by the consumer.

The enterprise shall reimburse all payments received from the consumer no later than 14 days from the day it receives the notice of withdrawal from the contract.

The enterprise shall return the reimbursement using the same means of payment as the consumer used unless the consumer has expressly requested the use of another means of payment and provided the consumer does not incur any costs as a result of such reimbursement.

The consumer may not request the reimbursement of supplementary costs that have arisen if the consumer has expressly opted for a type of delivery other than the least expensive type of standard delivery offered by the enterprise.

With respect to sales contracts, an enterprise may withhold the reimbursement of payments received until it receives the returned goods or until the consumer supplies evidence of having returned the goods, unless the enterprise has offered to collect the goods itself.

If the consumer has already received the goods and withdraws from the contract, he shall return the goods or hand them over to the enterprise or to a person authorised by the enterprise to receive the goods without undue delay, and in any event no later than 14 days from the notice of withdrawal referred to in the first paragraph of Article 43č of this Act, unless the enterprise has offered to collect the goods itself. The consumer shall be considered to have returned the goods on time if he sends them before the 14-day deadline for return has expired.

The consumer shall only cover the costs of returning the goods in the event that he withdraws from the contract unless the enterprise has agreed to cover them or the enterprise has failed to inform the consumer that the consumer is obliged to cover them.

In the case of off-premises contracts where the goods have been delivered to the consumer's home at the time of conclusion of the contract, the enterprise shall, at its own expense, collect the goods if, by their nature, those goods cannot normally be returned by post.

The consumer shall only be liable for any diminished value of the goods resulting from the handling of the goods other than the handling necessary to establish the nature, characteristics and functioning of the goods. The consumer shall not be liable for any diminished value of the goods if the enterprise has failed to provide notice of the right of withdrawal from the contract in accordance with point 4 of the first paragraph of Article 43b.

By exercising the right of withdrawal from the contract, the consumer assumes no obligations except for the obligations referred to in this Article, in the fourth paragraph of Article 43d and Article a43e of this Act.'

Article 11

New Articles a43e and b43e shall be inserted after Article 43d, reading:

'Article a43e

Where a consumer withdraws from a contract after having requested, in accordance with the seventh paragraph of Article 43c or the third paragraph of Article a43č of this Act, that the enterprise begin providing a service or supplying water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or district heating within the withdrawal period referred to in Article 43č of this Act, he shall pay the enterprise an amount which is in proportion to the service that has been provided until the time the consumer informed the enterprise that he was withdrawing from the contract. The proportionate amount is calculated on the basis of the total value of the contract. If the price in the contract is excessive in comparison with the market price, the proportionate amount shall be calculated on the basis of the market value.

A consumer shall bear no costs referred to in the preceding paragraph if the enterprise has failed to provide the information referred to in points 4 and 7 of the first paragraph of Article 43b or has not requested, in accordance with the seventh paragraph of Article 43c or the third paragraph of

Article a43č of this Act, that the enterprise begin providing a service or supplying water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or district heating.

A consumer shall bear no costs for the full or partial delivery of digital content which is not supplied on a tangible medium, if:

- the consumer did not give his prior consent to the start of service provision before the end of the withdrawal period referred to in Article 43č of this Act;
- the consumer has not acknowledged that he loses his right of withdrawal when giving the consent referred to in the preceding point;
- the enterprise has failed to provide confirmation in accordance with the sixth paragraph of Article 43c or the second paragraph of Article a43č of this Act.

Article b43e

If the consumer withdraws from a distance or off-premises contract, any ancillary contracts shall be terminated without any costs being incurred by the consumer, except for the costs referred to in Article 43d and the preceding Article. This provision shall not affect the provisions of the act governing customer credit, with regard to withdrawal from the associated credit contract’.

Article 12

Article 43e shall be deleted.

Article 13

Article 43g shall be deleted.

Article 14

A new second paragraph shall be added to Article 45, reading:

‘The preceding paragraph shall also apply to the unsolicited supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, district heating or digital content, and to unsolicited financial services’.

Article 15

Article 45a shall be amended to read:

‘Article 45a

The person who makes a telephone call to a consumer on behalf of an enterprise with a view to concluding a distance contract shall, at the beginning of the conversation, state the registered business name and registered place of establishment of the enterprise and, where applicable, the identity of the person on whose behalf he is making the call and the commercial purpose of the call.

Where a distance contract is to be concluded by telephone, the enterprise shall also provide the consumer with the information referred to in the fourth paragraph of Article 43c of this Act.

Where a distance contract is concluded by telephone, the enterprise shall send the consumer confirmation of the offer on a durable medium. The contract shall be concluded when the consumer signs it or sends a written statement to the effect that he accepts the offer’.

Article 16

In Chapter VI, Sub-Chapter 4c) ‘Off-premises contracts’ and Articles 46, 46a, 46b and 46c shall be deleted.

Article 17

In Chapter VI, the title of Sub-Chapter 4d) ‘Contracts for the supply of energy and water’ shall be deleted.

Article 18

In Chapter VI, a new Sub-Chapter 4e) shall be inserted after Article 46c, reading: ‘e) Distance marketing of financial services’, followed by new Articles 48a, 48b, 48c 48č, 48d and 48e, reading:

‘Article 48a

Under this Act, ‘distance contract for the supply of financial services’ means a contract concluded between an enterprise and a consumer under an organised distance sales or service-provision scheme, without the simultaneous physical presence of the contracting parties, and run by the enterprise which, for the purpose of concluding the contract, uses exclusively one or more means of distance communication up to and including the time at which the contract is concluded.

In the case of contracts for financial services comprising an initial service agreement followed by successive operations or a series of separate operations of the same nature, the provisions of this Sub-Chapter shall apply only to the initial agreement. Where there is no initial service agreement but the successive operations or the separate operations are of the same nature and performed over a certain period of time between the same contracting parties, Articles 48b and 48c shall be applied to the initial operation. Where no operation of the same nature is performed for more than one year, the next operation shall be considered to be the first in a new series of operations.

Article 48b

With distance contracts for the supply of financial services, the consumer shall, within a period appropriate to the means of communication used, receive the following information:

1. on the supplier:

- the main business of the supplier, the registered business address of the supplier and all addresses relevant to the consumer’s relations with the supplier;
- the identity and address of any representative of the supplier established in the consumer’s Member State of permanent residence, and the identity, address and function of any third person who takes part in the operation in a professional capacity but is not the supplier;
- the register in which the supplier is entered, with an indication of its registration number or other equivalent means of identification if entered in a court or other public register;

- where the supplier’s business is subject to a special authorisation, the relevant supervisory authority;

2. on the financial service:

- a description of the main characteristics of the financial service;
- the total price to be paid by the consumer to the supplier for the financial service, including all related commission, fees and expenses, and all taxes paid via the supplier or, when an exact price cannot be indicated, the basis for the calculation of the price, enabling the consumer to verify it;
- where relevant, notice indicating that the financial service is related to instruments involving risks related to their specific features or the operations to be executed, or whose price depends on fluctuations in the financial markets outside the supplier’s control and that historical performance is no indicator of future performance;
- notice regarding the possibility that other taxes and/or costs may exist that are not paid via or imposed by the supplier;
- any limitations of the period for which the information provided is valid;
- payment and performance;
- any costs related to using a means of communication, if such costs differ from the basic rate usually paid by the consumer;

3. on distance contracts:

- the conditions, deadlines and procedures for exercising the right of withdrawal in accordance with the first paragraph of Article 48č of this Act; where the consumer does not have the right of withdrawal in accordance with the third paragraph of Article 48č, this shall be explicitly stated;
- information on the amount which the consumer may be required to pay in the event of withdrawal from the contract on the basis of the first paragraph of Article 48d of this Act;
- the minimum duration of the contract, if the subject of the contract is a financial service to be performed permanently or recurrently;
- a contractual provision regarding the law to be applied to the distance contract and the competent court;
- information on any rights the parties may have to terminate the contract early or unilaterally, including all relevant contractual penalties;

4. on redress:

- whether there is an out-of-court redress mechanism and a description of the conditions for accessing this mechanism;
- information on the existence of a system of guarantees or other compensation agreements not regulated in the act governing banking, the act governing the securities market and the act governing the financial instruments market.

In the case of voice telephony communications, the supplier shall, at the beginning of any conversation with the consumer, make explicitly clear the registered business name and registered place of establishment of the supplier providing the financial service, the commercial purpose of the telephone call, and, subject to the explicit consent of the consumer, information on the identity of the person in contact with the consumer, his link with the supplier of the financial service, and the information

referred to in the first, second and fourth indents of point 2 and the first and second indents of point 3 of the preceding paragraph.

In the case of voice telephony communications, the supplier shall inform the consumer that he will, at the latter's request, send the additional information referred to in the first paragraph of this Article. The supplier shall, in addition to this, also meet its obligations under Article 48c of this Act.

The information referred to in this Article, the commercial purpose of which must be made clear, shall be provided in a clear and unambiguous manner and in a way that is appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith and fair dealing in commercial transactions, and the principle governing the protection of those who do not have full business capacity.

Article 48c

The supplier shall provide the information referred to in the preceding Article and the contractual terms and conditions to the consumer in a straightforward and comprehensible manner on a suitable durable medium in good time before the consumer is bound by the contract or offer. The supplier may, in exceptional circumstances, meet its obligation immediately after the conclusion of the contract, if the contract was concluded at the consumer's request using a means of distance communication that does not enable provision of the information and the contractual terms.

The consumer may, at any time during the contractual relationship, request receipt of the contractual terms and conditions on paper and change the means of distance communication used, unless these means are incompatible with the contract concluded or the nature of the financial service provided.

Article 48č

With distance contracts for the supply of financial services, the consumer shall have 14 days in which to inform the supplier that he is withdrawing from the contract. A 30-day period shall apply to distance contracts for the supply of life assurance and to distance contracts for the supply of personal pension insurance. Notice of withdrawal shall be considered to have been sent on time if sent within the contract withdrawal period.

If the supplier meets its obligation as referred to in the first paragraph of Article 48c of this Act in full, the period for exercising the right referred to in the first paragraph of this Article shall start on the day the contract is concluded, or on the day the supplier meets its obligation if it was met after the contract was concluded.

Unless the contracting parties agree otherwise, the consumer shall not have the right to withdraw from a contract as referred to in the first paragraph of this Article in the case of the following:

1. contracts for goods and services whose value depends on fluctuations in the financial markets that are outside the supplier's control and which may occur during the withdrawal period, services related to foreign exchange, money market instruments, transferable securities, shares in collective investment undertakings, financial futures contracts, including equivalent cash-settled instruments, forward interest-rate agreements, interest-rate, currency and equity swaps, and options to acquire or dispose of any instruments referred to in this point, including equivalent cash-settled instruments;
2. travel and baggage insurance policies, or similar short-term insurance policies of less than one month's duration;

3. financial services contracts whose performance has been fully completed by both parties at the consumer's express request before the consumer has exercised his right of withdrawal from the contract.

Article 48d

Where the consumer has withdrawn from a financial services contract, the supplier may require the consumer to pay for the services it has provided to him. Payment shall be proportionate to the extent already provided in comparison with the full coverage of the contract and may not be construed as a penalty. The supplier may only require payment from the consumer if it can prove that the consumer was duly informed of the amount payable in the event of withdrawal from the contract as referred to in Article 48b of this Act.

The supplier may require payment for the service as referred to in the preceding paragraph if the consumer has given his consent to commencement of the performance of the contract before the expiry of the withdrawal period and if he was duly informed of the amount payable in accordance with Article 48c of this Act.

If the consumer has already received the sums or the goods and has withdrawn from the contract, he shall return the sums or goods to the supplier without any undue delay and no later than within 30 days of sending the notice referred to in the first paragraph of the preceding Article of this Act.

The supplier shall, without any undue delay and no later than within 30 days of receiving the notice of withdrawal from the contract, return to the consumer any sums he has received from him, except for the sum referred to in the preceding paragraph.

Article 48e

The burden of proof in respect of the supplier's obligation to inform the consumer, the consumer's consent to the conclusion of the contract, where applicable, and performance of the contract shall rest with the supplier'.

Article 19

A new sentence shall be inserted at the end of the fourth paragraph of Article 60a, reading: 'The consumer shall sign the contractual provisions containing the information referred to in this paragraph separately from the other contractual provisions'.

The fifth paragraph shall be amended to read:

'A contract shall, in addition to the information contained in the form referred to in the sixth paragraph of this Article, contain the name, surname, place of permanent residence and signature of the consumer, the supplier's registered business name and registered place of establishment, the signature of the supplier's legal representative, and the date and place of the signing of the contract'.

Article 20

The last sentence of the first paragraph of Article 60č shall be amended to read: 'A consumer shall be considered to have submitted the notice on time if he sends it within the contract withdrawal period'.

Article 21

A new second indent shall be added to Article 72a, reading:

‘– an enterprise does not return payments to a consumer in the event that the consumer has withdrawn from the contract on the basis of the second or third paragraph of Article 25a of this Act (fourth paragraph of Article 25a);’.

Article 22

A new point 8a shall be inserted after point 8 of the first paragraph of Article 77, reading:

‘8a. they do not return all payments to a consumer without undue delay in the event that the consumer has withdrawn from the contract on the basis of the second or third paragraph of Article 25a of this Act (fourth paragraph of Article 25a);’.

Points 13, 14, 15, 16, 17 and 18 shall be amended to read:

‘13. they fail to provide a consumer with the information referred to in the first paragraph of Article 43b in accordance with the first, second and fourth paragraphs of Article 43c and the first paragraph of Article a43č of this Act in relation to a distance contract or off-premises contract before the contract or offer becomes binding on the consumer;

14. they fail to ensure when a consumer is placing an order, that he explicitly acknowledges that by placing an order he agrees to pay (third paragraph of Article 43c);

15. in the event of the existence of restrictions regarding delivery or the form of payment, they fail to state this clearly and intelligibly on their website no later than by the start of the order procedure (fifth paragraph of Article 43c);

16. they fail to provide a consumer with confirmation of the distance contract concluded on a durable medium by the time the goods are delivered or the service provision begins (sixth paragraph of Article 43c);

17. in relation to a distance contract, off-premises contract or distance contract for the supply of financial services, they do not return all payments made in the event that the consumer has withdrawn from the contract within the prescribed period (second paragraph of Article 43d and fourth paragraph of Article 48d);

18. in relation to a distance contract for the supply of financial services, they fail to provide the consumer with the information referred to in Article 48b of this Act within the prescribed period and on an appropriately durable medium (Article 48c);’.

Point 19 shall be deleted.

The previous points 20 to 38 shall become points 19 to 37.

Article 23

A new point 1h shall be inserted after point 1g of the first paragraph of Article 78, reading:

‘1h. they fail to provide the information referred to in the first paragraph of Article 25b to the consumer before the contract becomes binding on him;’.

A new point 8a shall be inserted after point 8, reading:

'8a. the recipient of the payment for using a specific payment instrument charges consumer costs that exceed the actual costs incurred by the payment recipient in using this instrument (Article 27b)';

Point 19 shall be deleted.

TRANSITIONAL AND FINAL PROVISIONS

Article 24

The minister responsible for the economy shall issue the rules referred to in the ninth paragraph of Article 43b and the fifth paragraph of Article b43d of this Act within three months of the entry into force of this Act.

Article 25

This Act shall enter into force on 13 June 2014.

No 311-06/14-2/18
Ljubljana, 20 May 2014
EPA 1859-VI

The National Assembly
of the Republic of Slovenia
Janko Veber [signed]
President