

# **BOSNIA AND HERZEGOVINA**

## *Diagnostic Review of Consumer Protection and Financial Literacy in Banking Services*

### **Volume II Comparison with Good Practices**

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of Bosnia and Herzegovina

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## *Diagnostic Review of Consumer Protection and Financial Literacy in Banking Services*

### Volume II

### Comparison against Good Practices

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## ***Introduction***

**With the exception of Brčko District in the northeast,<sup>1</sup> Bosnia and Herzegovina (BiH) consists of two largely autonomous administrative Entities, namely the Bosniac-Croat Federation, also known as the Federation of Bosnia and Herzegovina (FBiH), and the Republika Srpska (RS).** These Entities are responsible for most policy formulation and resulting legislative enactments, as well as for the application and enforcement of these enactments within their respective borders.

**The Constitution of the State of BiH granted weak powers to the State of BiH, with most powers accorded to the two Entities.**<sup>2</sup> The Constitution of the State of BiH was agreed at Dayton as Annex 4 of the General Framework Agreement for Peace on 14 December 1995. The RS and the FBiH were confirmed as Entities of BiH. Bosniacs, Serbs and Croats were described as “constituent peoples”.<sup>3</sup> At the State-level, power-sharing arrangements were introduced, making it impossible to reach decisions against the will of the representatives of any constituent people. A vital interest veto for all three constituent peoples was established in both chambers of parliament and a collective Presidency of three members with a Serb from the RS and a Bosniac and a Croat from the FBiH.

**Following considerable delay, as a result of concerns about the capacity of BiH to harmonize its policies and laws with those of the EU, a Stabilization and Association Agreement was signed between BiH and the EU in June 2008.** However difficult, it remains incumbent upon BiH to make progress in adopting common rules, standards and policies that make up European Union law.<sup>4</sup> And these common rules, standards and policies apply in matters of consumer protection, as they do in a great many other fields.

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<sup>1</sup> Brčko District is a 173 square mile, neutral, self-governing administrative unit, under the sovereignty of Bosnia and Herzegovina.

<sup>2</sup> By Article III.1 of the State Constitution, the responsibilities of the State are extremely narrow. Also, according to Article III.3 (a): “*All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.*” The weakness of the State is also confirmed by Article VIII.3 on Finances which makes the State dependent on contributions from the Entities: “*The Federation shall provide two-thirds, and the Republika Srpska one-third, of the revenues required by the budget, except insofar as revenues are raised as specified by the Parliamentary Assembly.*” Furthermore, the only Court explicitly provided for at the State level is the Constitutional Court.

<sup>3</sup> For purposes of this Report, “Bosnians” means all constituent peoples and all other citizens of BiH.

<sup>4</sup> To gain membership in the EU, the so-called ‘Copenhagen criteria’ established by the European Council in 1993 must be satisfied. Besides adopting the common rules and standards comprising European Union law, this requires BiH to achieve stable democracy status, to guarantee the rule of law, human rights and respect for and protection of minorities, as well as to demonstrate the existence of a functioning market economy, and the capacity to cope with competitive pressures and market forces within the EU. In addition, the specific priorities identified in the European Partnership with BiH entered into in November 2007 must also be met.

## Overview of the BiH Financial Sector

The BiH financial system is largely dominated by the banking sector. Banking sector assets grew at rates of 28 percent in 2006 and 34 percent in 2007. In 2008, however, the growth rate significantly decreased to 6 percent. In 2009 however the banking sector assets decreased by only 1 percent, a trend that continued in 2010. Still, at the end of 2010, the banking sector represented 84 percent of the total assets of the financial sector.

**Table 1: Assets of Financial Institutions in BiH**  
(as percent of GDP)

Financial Institutions	2005	2006	2007	2008	2009	2010
Banks	67.58	76.46	89.94	84.21	85.85	86.51
Investment funds	10.57	8.11	8.09	4.96	3.63	3.76
Leasing companies	3.90	5.39	6.34	6.50	5.90	4.69
Insurance and reinsurance	3.99	3.70	3.92	3.60	3.92	3.99
Microcredit organizations	1.85	2.54	4.35	4.91	4.53	3.63
<b>Total</b>	<b>87.90</b>	<b>96.18</b>	<b>112.64</b>	<b>104.18</b>	<b>103.83</b>	<b>102.58</b>

Source: CBBiH

At the same time, relatively few Bosnians make use of formal financial services. Initial estimates from the World Bank in 2003 were that only 17 percent of Bosnians then had an account with any financial intermediary. According to the Living Standards Measurement Survey carried out in 2004, 15 percent of Bosnian households were indebted in financial institutions. More recently, it has been estimated that less than 40 percent of BiH adults have a bank deposit account, one of the lowest rates in the region.

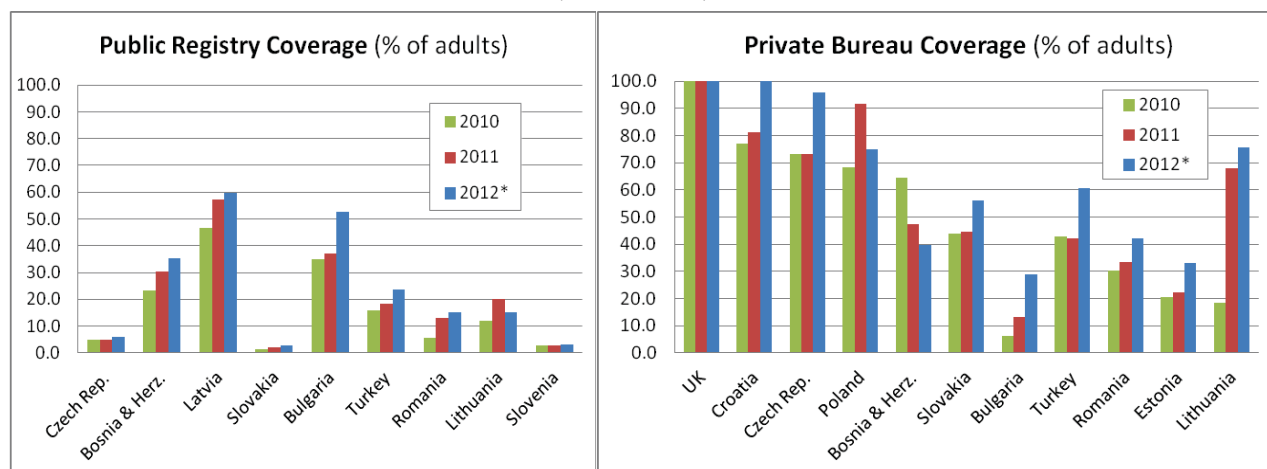
**Table 2: Access to Banking Services**

	Number of Bank Deposit Accounts (per thousand adults)	Value of Bank Deposits (as percentage of GDP)	Number of Bank Deposit Accounts (per thousand adults)	Value of Bank Deposits (as percentage of GDP)
	2009		2010	
<b>Bosnia and Herzegovina</b>	<b>380.4</b>	<b>53.89</b>	<b>n.a.</b>	<b>49.74</b>
Latvia	1,218.60	74.9	1,205.16	55.91
Slovenia	1,393.60	74.89	1,380.42	102.07
Croatia	n.a.	97.83	1,441.51	70.1
Poland	1,527.40	48.57	1,626.41	30.27
Czech Republic	1,679.60	87.91	1,739.26	62.91
Slovak Republic	n.a.	47.63	1,857.83	62.73
Bulgaria	1,987.30	66.75	2,005.78	51.78
Hungary	1,570.80	51.38	2,058.27	38.06
Estonia	2,751.90	81.51	2,669.14	70.95
Ukraine	3,755.00	48.58	3,145.32	22.03
Lithuania	2,142.40	42.25	4,190.10	34.91

Source: CGAP and World Bank, *Financial Access*, 2009

**The credit reporting system in BiH has been developing in recent years.** Although the public credit registry is expected to cover almost 35 percent of the adult population by 2012, the private credit bureau coverage is expected to shrink from 64 percent in 2010 to 47 percent in 2011 and 40 percent in 2012. The extent of the combined coverage puts BiH's credit reporting system above the average of other European countries, including Latvia, Slovakia and Romania. The coverage, however, is still not enough to surpass that of Croatia and the Czech Republic (see Figure 1). It is important to note that the private credit bureau in BiH does include credit information from retailers, trade creditors and utility companies in addition to information from banks and non-bank financial institutions.

**Figure 1: Cross-Country Comparison of Credit Reporting Systems Coverage**  
(% of adults)



Source: World Bank, *Doing Business 2010, 2011, 2012*

**The efficiency of the system for enforcing contracts in BiH is below the average of the region.** BiH is ranked 97<sup>th</sup> in terms of countries with policies to protect investors and 125<sup>th</sup> in estimated number of days required to enforce contracts (see Table 3). Consistently speedy enforcement of liens on collateral assures lenders that the taking of collateral does constitute effective security when their borrowers default. In terms of cost of enforcement, BiH has the highest average cost in the region with enforcement eating up to 40 percent of the amount being claimed. This average cost is 21 percentage points higher than the average of Central and Eastern Europe (19 percent). Although these statistics correspond to procedures for enforcing commercial contracts, they provide an idea of the efficiency of the system for enforcing other types of contracts as well.

**Table 3: Efficiency of Systems for Enforcing Contracts in Europe**

	Number of Procedures	Number of Days	Cost (as % of Claim)
Latvia	27	369	23.1
Czech Republic	27	611	33
Lithuania	30	275	23.6
Slovakia	32	565	30
Romania	31	512	28.9
Slovenia	32	1,290	12.7
Hungary	35	395	15.0
Estonia	35	425	22.3
Russia	36	281	13.4
Croatia	38	561	13.8
<b>Bosnia and Herzegovina</b>	<b>37</b>	<b>595</b>	<b>40.4</b>
Poland	37	830	12.0

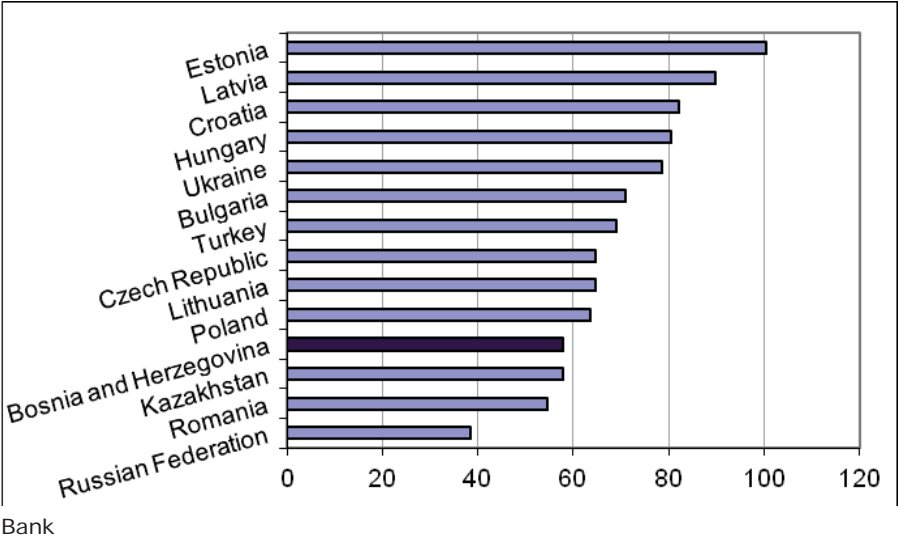
Bulgaria	39	564	23.8
Central and Eastern Europe	49	450.9	19.0

Source: World Bank, *Doing Business 2010*

## Overview of the BiH Banking Sector

The size of the BiH banking sector in relation to GDP is similar to neighboring countries. By 2010, the share of BiH’s banking sector assets in relation to GDP reached almost 60 percent. This level was higher than that of Kazakhstan (58 percent), Romania (55 percent) and Russia Federation (39 percent), but lower than Czech Republic (65 percent), Ukraine (79 percent) and Croatia (82 percent).

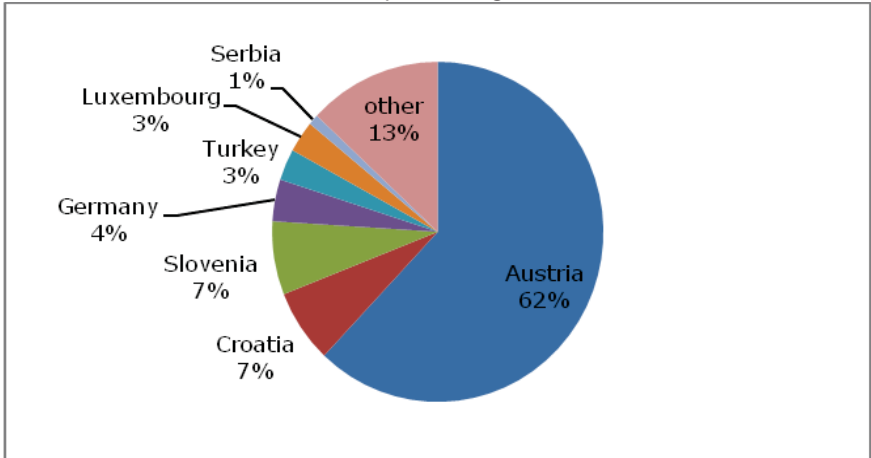
**Figure 2: Cross-Country Comparison of Banking Sector Size in 2010**  
(as % of GDP)



Source: World Bank

The BiH banking sector is mostly foreign-owned. As of 2010, there were 28 banks operating in BiH: 18 based in FBiH and 10 in RS. 27 banks are foreign-owned, 7 are domestic private banks and 1 majority state-owned. The ownership structure of the banking system by end-2009 indicated that almost 95 percent of total assets and 88 percent of average equity capital was held by foreign-owned banks, whereas in 2008 these percentages were 95 and 88, respectively. According to statistics from the Central Bank, 62 percent of foreign capital invested in the banking system in 2010 came from Austrian investors (see Figure 3).

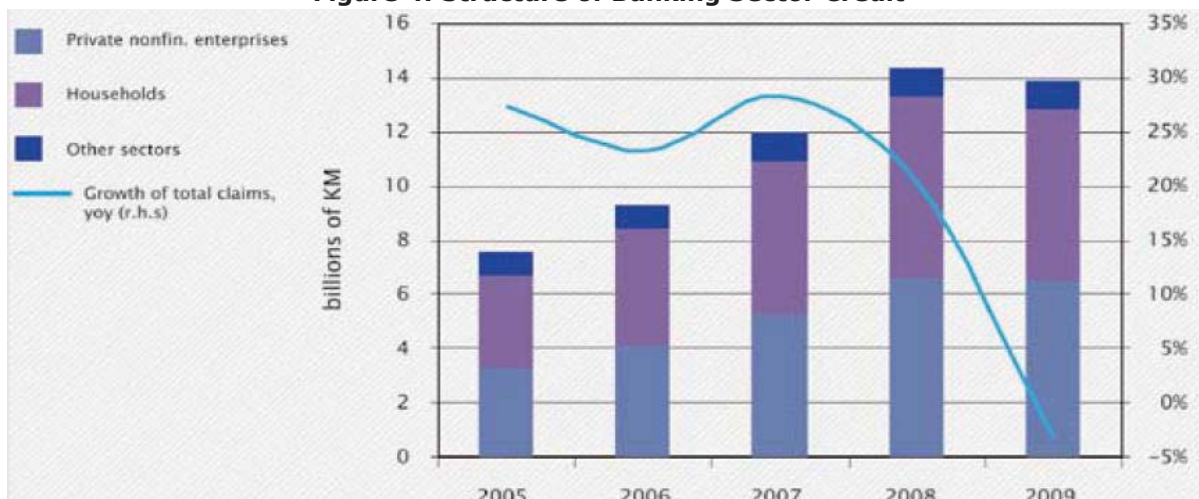
**Figure 3: Share Capital of the BiH Banking System by Country in 2009**  
(in percentage)



Source: CBBiH

**The expansion of the banking sector has been driven by credit to households.** The banking sector credit portfolio grew at an average annual rate of 25 percent from 2004 to 2008, but experienced a drop of 5 per cent from 2008 to 2009, which was the first loan decline in ten years; this loan decline continued through the first half of 2010 as well. Over the years, credit to the household sector has increased its share of the total banking credit portfolio. As of 2008, the debt of households in BiH (27.1 percent of GDP) was far above the average value of the region (4.6 percent of GDP); however, in 2009 BiH recorded a significant decrease in loans to households (approximately 2% of GDP).

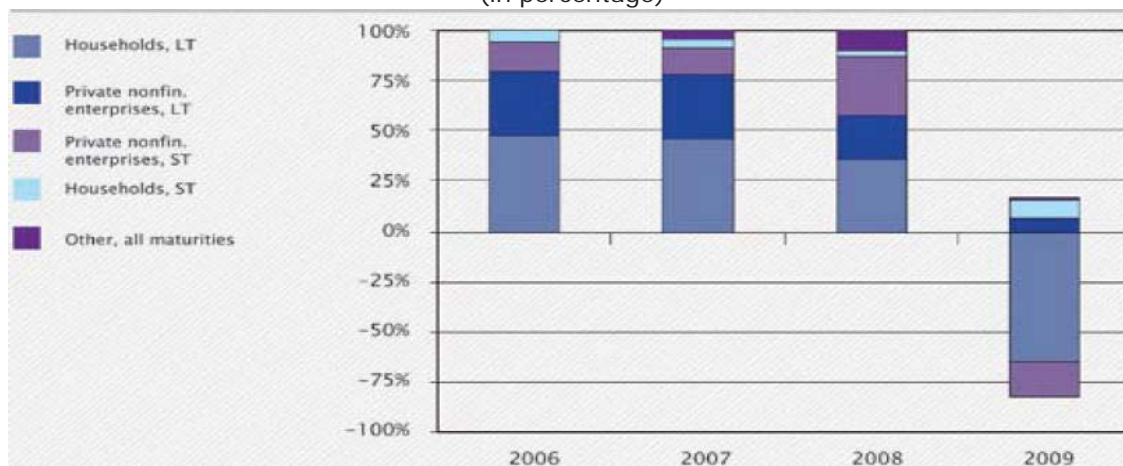
**Figure 4: Structure of Banking Sector Credit**



Source: CBBiH, Financial Stability Report, 2009

**The increase of long-term lending to households has represented more than 40 percent of the growth in the banking credit portfolio over the past six years.** In the same period, short to medium-term credit to the household sector has grown by more than 50 percent within the same portfolio. The most dynamic component of household credit has been long-term lending. However, in 2008, for the first time, credit to the household sector represented less than 40 percent of the total growth of the banking credit portfolio. Further, in 2009 decrease in the household credit portfolio was the main responsible in the overall decrease in banking sector credit growth.

**Figure 5: Contribution to Banking Sector Credit Growth**  
(in percentage)



Source: CBBiH, Financial Stability Report, 2009



**There is a significant source of risk in the household loan portfolio of the banking sector.** Most household loans are long-term, mainly indexed and with a variable interest rate. As seen in Table 4, more than half of the loans extended to households are for 5 years or more, with almost 40 percent of the loans for more than 10 years. Further, the impact of the financial crisis on households can be gauged from the drop in total loans by 10% from 2008 to 2009, which has been stable at almost the same level in 2010.

**Table 4: Maturity of Households Loans in 2008**

	2010				2009				2008			
	KM	Euro	CHF	Total	KM	Euro	CHF	Total	KM	Euro	CHF	Total
up to 1 year	48	7	3	58	621	35	0	655	70	8	0	79
1 - 3 years	224	83	8	315	692	67	2	762	270	194	1	465
3 - 5 years	560	134	2	696	666	208	31	906	677	261	9	947
5 - 10 years	1,610	642	39	2,290	1,319	428	97	1,844	1,513	963	63	2,539
over 10 years	1,090	761	395	2,246	1,016	219	185	1,420	870	821	416	2,107
<b>TOTAL</b>	<b>3,532</b>	<b>1,627</b>	<b>446</b>	<b>5,605</b>	<b>4,313</b>	<b>957</b>	<b>316</b>	<b>5,587</b>	<b>3,401</b>	<b>2,247</b>	<b>489</b>	<b>6,137</b>

Source: CBBiH, *Financial Stability Report*, 2010, 2009, 2008

## **List of Relevant Laws**

**While a general law on consumer protection exists at State-level, no such law exists in either Entity, much less a specific law for consumer protection in banking services.** Laws regulating the banking industry do, however, exist at Entity-level. The main laws and regulations providing directly or indirectly for consumer protection in the banking sector are the following:<sup>5</sup>

### **State-level:**

- The Constitution of BiH adopted on 1 December 1995 by decision of the High Representative
- Consumer Protection Act (Official Gazette of BiH, No. 25/06)
- Law on Competition (Official Gazette of BiH, No. 48/05)
- Criminal Code (Official Gazette of BiH, No. 37/03, 61/04, 30/05, 53/06, 55/06, 32/07 and 8/10)
- The Law on the Central Bank of BiH (Official Gazette of BiH, No. 1/97, 29/02, 8/03, 13/03, 14/03, 9/05, 76/06 and 32/07)
- Law on Deposit Insurance in Banks of BiH (Official Gazette of BiH, Nos. 20/02 and 18/05) as further amended (Official Gazette of BiH, No. 100/08 and 75/09)
- Law on the Protection of Personal Data (Official Gazette of BiH, No. 49/06)
- Law on Obligations (Official Gazette of the Socialist Federal Republic of Yugoslavia, Nos. 29/78, 39/85, 45/89 and 57/89)
- Law on Associations and Foundations (Official Gazette of BiH, Nos. 32/01 and 42/03)
- Law on Market Surveillance (Official Gazette of BiH, No. 45/04)
- Law on Mediation Procedure (Official Gazette of BiH, No. 37/04)
- Law on Transfer of Mediation Affairs onto the Association of Mediators (Official Gazette of BiH, No. 52/05)

### **Federation of Bosnia and Herzegovina Entity-level:**

- The Constitution of the FBiH (Official Gazette of the FBiH, No. 01/94, 13/97, 16/02, 22/2, 52/02, 18/03, 63/03, 9/04, 20/04, 33/04, 71/05, 72/05 and 88/08)
- Law on Banks (Official Gazette of the FBiH, Nos. 39/98, 32/00, 48/01, 27/02, 41/02, 58/02, 13/03, 19/03 and 28/03)
- Law on the Banking Agency of the FBiH (Official Gazette of the FBiH, Nos. 9/96 and 27/98, 20/00, 45/00, 58/02, 13/03, 19/03, 47/06, 59/06 and 48/08)
- FBiH Banking Agency's By-laws, Regulations and Decisions, most notably
  - Decision on Amendments to Decision on Uniform Method of Effective Interest Rate Accrual and Reporting on Loans and Deposits (24 June 2009)
  - Decision on Temporary Renegotiation of Citizens' Credit Liabilities and Processing of Banks in the Federation of Bosnia and Herzegovina (02 June 2009, amended on 28 July 2009)
  - Decision on Minimum Standards for Recording Bank's Loan Activities (19 December 2002)
- Law on Obligations (Official Gazette of the FBiH, Nos. 2/92, 13/93 and 13/94)
- Law on Inspections (Official Gazette of the FBiH, No. 69/05)
- Code of Administrative Procedure (Official Gazette of the FBiH, 2/98 48/99)
- Financial Collateral Law (Official Gazette of the FBiH, No.54/04)

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<sup>5</sup> The authors did not visit Brcko District, BiH, and, thus, this Review does not deal in any way with legislative enactments or regulatory provisions specific to that District.

- Law on the Execution of Criminal Sanctions (Law on Misdemeanors) (Official Gazette of the FBiH, No. 44/98 and 42/99 (HRD 12/09))
- Payment Transaction Law (Official Gazette of the FBiH, No. 32/00)
- Law on Bankruptcy Proceedings (Official Gazette of the FBiH, No. 29/03, 32/04 and 42/06)
- Ministry of Trade Circulars

### **Republika Srpska Entity-level:**

- The Constitution of RS (Official Gazette of RS, No. 6/92, 8/92, 15/92, 19/92, 21/92, 28/94, 8/96, 13/96, 15/96, 16/96, 21/96, 36/00, 31/02, 31/03, 98/03, 117/05, and 48/11)
- Law on Banks (adopted on the Fifth Session of the National Assembly of Republika Srpska on April 29 and 30, 2003, Official Gazette of RS, No. 44/03, and 74/04)
- Law on the Banking Agency of the RS (Official Gazette of RS, No. 10/98, 16/00, 18/01, 71/02, 18/03 and 39/03)
- RS Banking Agency's By-laws, Regulations and Decisions, most notably:
  - Decision on the Uniform Manner of Calculation, and Expression of Effective Interest Rate for Loans and Deposits (Official Gazette of RS, No. 3/07, 82/09, and 97/09)
  - Decision on Minimum Standards for Documenting Bank's Lending Activities (10 February 2003) (Official Gazette of RS, No. 12/03)
  - By-Laws (Official Gazette of RS, No. 38/98 and 67/04)
  - Decision on Bank Supervision (Official Gazette of RS, No. 12/03)
  - Decision on Regulating Minimum Standards for Credit Risk Management and Banks Asset Classification (10 February 2003, amended on 23 December 2005) (Official Gazette of RS, No. 12/03, 85/04, 01/06 and 136/10)
  - Decision on Minimum Standards of Bank Activities related to Prevention of Money Laundering and Terrorism Financing (February 2003) (Official Gazette of RS, No. 12/03, 55/04 and 56/05)
  - Decision on detailed Conditions and Procedures of Banks following Consumer Complaints (Official Gazette of RS, No. 58/10)
  - The Rulebook on the Banking System Ombudsman of the RS (Official Gazette of RS, No. 48/11)
  - The Rules of the RS Banking System Ombudsman's Treatment of Notification or Complaint by Financial Services' Users (Official Gazette of RS, No. 111/11)
- Law on the Default Interest Rate (Official Gazette RS, no. 19/01, and 52/06) Law on Obligations (Official Gazette of RS, Nos. 17/93, 3/96, 39/03 and 74/04)
- Law on Inspections (Official Gazette of RS, No. 74/10)
- Law on General Administrative Procedure (Official Gazette of RS, No. 13/02, 87/07 and 50/10)
- The Law on Minor Offences of the Republika Srpska (Official Gazette RS, no. 34/06, 1/09. And 109/11)
- Law on the Execution of Criminal Sanctions and Sanctions passed in Minor Offences Proceedings (Law on Misdemeanors) in RS (Official Gazette of RS, No. 64/01)
- Law on Payment Transactions (Official Gazette of RS, No. 12/01)
- Law on Bankruptcy Proceedings (Official Gazette of RS, No. 26/10 –consolidated text)
- Law on Coordination Committee for Supervision over the RS Financial Sector (Official Gazette of RS, No. 49/09)
- Law on Insurance Agencies (Official Gazette of RS, No 17/05, 1/06, and 64/06)
- Ministry of Trade and Tourism: circulars

## ***Summary of Institutional Arrangements***<sup>6</sup>

**Although there is no single government agency responsible for developing and enforcing consumer protection in banking or financial services, various agencies at State and Entity level deal with this subject.** There is no single agency, whether at State or Entity level, that is responsible for informing citizens of their rights and interests as consumers, ensuring that these rights and interests are protected, and conducting market supervision in the field of consumer protection regarding banking and other financial services. Rather, various agencies at State and Entity level deal, however modestly or inappropriately, with the subject of consumer protection in banking services. These agencies are summarized below.

**The Consumer Protection Council (the Consumer Council) is an administration organ established at State level by the Consumer Protection Act of 2005.** The Consumer Council consists of 15 individuals representing the following institutions:

1. Ministry of Foreign Trade and Economic Relations, chairman;
2. Competition Council of BiH;
3. Veterinary Office of BiH;
4. Office for Phyto-Sanitary Protection of BiH;
5. Statistics Agency of BiH;
6. Institute for Standards of BiH;
7. Institute for Measurements of BiH;
8. Institute for Intellectual Property of BiH;
9. Ministry of Trade of the FBiH;
10. Ministry of Trade and Tourism of the RS;
11. Competent body of Brčko District;
12. A FBiH consumers' organization;
13. A RS consumers' organization;
14. Union of BiH Consumer Associations (2 representatives).<sup>7</sup>

**The Consumer Council has limited institutional capacity to focus on financial sector issues.** By the terms of the Consumer Protection Act, the Consumer Council is required to meet at least four times a year.<sup>8</sup> The Council operates without any permanent staff and, as its membership makes clear, it is not focused on issues of consumer protection in banking or in any other segment of the financial sector. Its purposes are to: (i) prepare an Annual Consumer Protection Program for adoption by the State's Council of Ministers; (ii) monitor the implementation of these annual Programs; (iii) determine the basics of

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<sup>6</sup> This Review, likewise, does not deal with any Brčko District institution that may be concerned with any aspect of consumer protection in that District.

<sup>7</sup> See Article 106 (1) of the Consumer Protection Act.

<sup>8</sup> *Ibid*, Article 106 (2). The Council met four times in 2007 and three times in 2008. As of November 20, 2009, it had met only twice in 2009.

consumer protection policies; and (iv) define the volume of activities to be financed or co-financed from the State budget.<sup>9</sup>

**The Ombudsman Institution for Consumer Protection in BiH (Consumer Ombudsman) is an “independent institution” established by Article 100 of the Consumer Protection Act.** The Consumer Ombudsman is appointed for a five-year term (renewable once) by the State-level Council of Ministers on the recommendation of the State Ministry of Foreign Trade and Economic Relations. The Office is located in Mostar, is financed exclusively by the State budget<sup>10</sup> and has a full-time staff of four, including the Ombudsman and two assistant ombudsmen.<sup>11</sup> The Office exists in order:

- to disseminate information on consumer rights and obligations and to support consumer associations in performing such activities;
- to review practices and proposed practices regarding business-to-consumer relationships;
- to investigate market practices aimed at consumers whether on his or her own initiative or following complaints and to coordinate in these respects with Entity and Brčko District Market Inspectorates;
- to make decisions or take appropriate action in cases of consumer complaints or business malpractices;
- to issue guidelines or recommendations about particular unfair standard terms or practices used in specific sectors or by specific economic operators;
- to recommend the use of particular contractual terms;
- to negotiate, with representatives of concerned trade associations, model contracts applicable to specific sectors of activity;
- to propose and initiate the settlement of consumer disputes through alternative dispute resolution mechanisms;
- to liaise with the Human Rights Ombudsman Institution on common concerns;
- to advise the Consumer Protection Council and the State Level Council of Ministers on necessary improvements in consumer law and on the direction and effectiveness of Government policy in the consumer area; and
- to assess the impact of other governmental initiatives on consumer protection.<sup>12</sup>

An appeal against a decision of the Consumer Ombudsman may be made, but only in the event that the Consumer Protection Act or some other legislative enactment expressly allows this possibility. While covering all aspects of consumer protection, the Consumer Ombudsman ventured into the territory of consumer protection in banking services on 28 April 2009 when it issued 16 “Guidelines and Recommendations in the Sector of Consumer Loans”.

**The Competition Council is an independent State-level council, established by the Law on Competition of 2005.** This law is modeled on European Union (EU) competition laws and addresses non-competitive conditions in BiH. The law defines monopolistic conditions and prohibits abuse of “dominant positions” by monopolies. It also contributes to general consumer protection in BiH by establishing a mechanism for the redress of individuals’ grievances against monopolies and by levying appropriate penalties. It does not, however, specifically address consumer protection issues in banking.

**The State-level Market Surveillance Agency<sup>13</sup> coordinates overall activities of market surveillance in BiH, leaving to Inspection Authorities in RS and the FBiH (“Inspectorates”) to carry out direct inspection controls, including on-site inspections.**

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<sup>9</sup> Ibid, Article 107

<sup>10</sup> The annual budget for 2009 amounts to KM 400,000.

<sup>11</sup> The Ombudsman and the two assistant ombudsmen come from the three distinct ethnicities in BiH and operate by consensus.

<sup>12</sup> See Article 101 of the Consumer Protection Act.

**The State-level Central Bank of Bosnia and Herzegovina (CBBiH) was established in June 1997, with the goal of achieving and maintaining monetary stability.**<sup>14</sup> In addition, basic tasks of the Central Bank include coordinating the activities of the Banking Agencies at Entity-level, including the holding of monthly meetings of the heads of the Banking Agencies with representatives of the Central Bank and the receiving of monthly reports from the Banking Agencies on their activities and on developments at the financial institutions under their jurisdiction.<sup>15</sup> That said, while the Central Bank is one of the most highly respected institutions in BiH and has undoubted convening power when matters affecting the banking system of BiH are in question, it does not play a supervisory role in respect of the operations of BiH commercial banks. However, in 2008 the CBBiH and the Banking Agencies signed the Memorandum on the Principles of Coordination of Banking Supervision, Cooperation, Exchange of Data and Information, which intensified the cooperation and coordination between these institutions. It is expected that, under the framework of the recent Law on the RS Banking Agency that expanded its mandate to include consumer protection responsibilities, the RS Banking Agency will coordinate with CBBiH further in this area.

**The Central Bank set up the Central Registry of Credits of Legal and Physical Entities in 2006 to collect and access credit information of legal entities initially, and natural persons later.** The scope of information collected and accessed through the Central Registry of Credits has been constantly evolving. In January 2009, the Central Bank issued a Decision that established access to the Registry for commercial banks, micro-credit organizations and savings-credit organizations, as well as to any leasing company, insurance organization or other entity that seeks to be included in the Registry.

**The Personal Data Protection Agency was set up in 2009 as an independent authority in charge of overseeing the Law on the Protection of Personal Data and related legislation, both at State and Entity level.** The Agency replaced the Committee of Personal Data Protection, operating since 2001. The institutional change responded to the need for increased autonomy in this field and for compliance with the observations raised on this issue by the EU. The Agency is planning to conduct monitoring activities over all types of institutions handling personal data, including banks and other financial institutions. The Agency has started to review the data systems of banks that have requested the Agency's opinion.

**The Deposit Insurance Agency of BiH was set up in 2002 as an independent, non-profit legal entity with full authority under the law of the State.** The Agency has its headquarters in Banja Luka and branches in Sarajevo and Banja Luka. Twenty-five banks are members of the deposit insurance scheme. The main tasks of the Deposit Insurance Agency are to: (i) provide for protection of deposits of natural persons in member banks in accordance with the Law on Deposit Insurance; (ii) issue the deposit insurance membership certificate to any bank that meets the criteria for participation in the deposit insurance scheme (regarding capital, liquidity, asset quality, management, profitability, accounting standards and reserves); (iii) suspend or terminate membership; (iv) invest the capital of the Deposit Insurance Fund in line with provisions of the law and regulations of the Agency; (v) pay out insured deposits in case of cessation of a member bank's operations; and (vi) issue relevant regulations for the scheme and the Agency.

**In both Entities, Banking Agencies license banks and other financial institutions, and are in charge of the prudential supervision of their activities.** The Banking Agencies have the authority to impose penalties upon commercial banks and their officials if regulatory requirements are violated.

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<sup>13</sup> Established by the Law on Market Surveillance (Official Gazette of BiH No. 45/2004).

<sup>14</sup> See Article 2, Section 1 of the Law on the Central Bank of BiH (Official Gazette of BiH, No. 1, 1997), as amended.

<sup>15</sup> Ibid., Article 2, Section 3. e

**Also in both Entities, Departments of the Ministries of Trade<sup>16</sup> have set up Consumer Protection Offices.** These offices provide budgetary resources to non-governmental consumer organizations or consumer associations.

**Apart from government agencies, various associations play more or less significant roles in consumer protection in banking.**

**The Bosnia and Herzegovina Banks' Association has jurisdiction over the entire territory of BiH.** This Association is non-governmental, non-political and not-for-profit<sup>17</sup> and it resulted from the merger in 2004 of two pre-existing Associations of Commercial Banks, one in RS and the other in the FBiH. The Association's membership is voluntary and consists of 28 commercial banks operating in BiH as of November 2009.<sup>18</sup> The Association is based in Sarajevo and has a full-time staff of three. Among other things, it has developed a voluntary Code of Conduct for all commercial banks. It has also established various Commissions, one of which is focused on legislative reform.

**There are various consumer organizations or consumer clubs at State and Entity levels.** Many of these receive modest sums from Government budgets to assist them in carrying out their work of helping consumers understand their rights and of acting on behalf of consumers when disputes arise in respect of their claims. There is an **Association of Consumer Organizations** in each Entity and a **Union of Consumer Associations** in BiH.

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<sup>16</sup> In RS, the relevant Ministry is the Ministry of Trade and Tourism.

<sup>17</sup> See the Articles of Association of the Banks' Association of BiH dated 24 June 2004.

<sup>18</sup> The RS Development Bank has not joined and has no intention of joining since it does not take deposits, but rather acts as an economic development arm of the RS.

## ***Key Recommendations***

- Consideration needs to be given to making amendments to the existing State-level Consumer Protection Act, taking into consideration the 2008 EU Directive on Consumer Credit and including detailed cross-references to all relevant provisions in the Law on Obligations.
- As required by the State Law on Consumer Protection of 2005, the Entities should take steps to legislate in the field of consumer protection, provided, however, that this legislation is in harmony with the State law.
- Consideration needs to be given to strengthening the institutional framework for banking consumer protection.
- The Banks' Association should be encouraged to draft a revised and updated Code of Ethics for formal endorsement by all member banks.
- Consideration might also be given to establishing a principles-based, statutory code of conduct for banks that is devised by a team under the supervision of a Central Bank Commission. Once enacted, this would then need to be strictly monitored by the Banking Agencies to ensure compliance with the law.
- When making a recommendation to a consumer, any BiH commercial bank should be required, by law, to gather, file and record sufficient information from the consumer in order to ensure that its recommended product or service is appropriate to that consumer.
- Suitability rules must be enacted and enforced.
- Consideration should be given to requiring any bank to conduct specific actions prior to having a consumer enter into a consumer credit agreement with the bank.
- Given the extent of public concern still surrounding the questions of how, when and why floating interest rates may legitimately be adjusted, it is suggested that a Central Bank Commission, in technical discussions, look to these issues as a matter of some urgency so that better guidance can be forthcoming from both Banking Agencies as soon as possible.
- A "cooling-off period" should be applied to all consumer loans.
- The law should explicitly indicate the cases where bundling of a product or service is permissible. The law should also require full disclosure in the event that any accompanying service is offered to a consumer in the context a consumer credit.
- The revised banking code of ethics should state that a bank shall be prevented from excluding or restricting, or from seeking to exclude or restrict, any liability arising from the bank's failure to exercise a duty of skill, care and diligence.
- Every bank should be required to provide a consumer, before he or she opens a bank account, with a written copy of its general terms and conditions and the specific terms and conditions that apply to the type of bank account to be opened.
- The Banks' Association should produce a standard set of easily understandable scenarios reflecting variation of conditions of a credit agreement (e.g. increase of interest rate or foreign exchange rate), which should be given to consumers prior to signing specific types of credit agreements.
- Banks should be required to provide the consumer with a Key Facts Statement for each product or service offered.
- The Banks' Association, possibly with the collaboration of the Banking Agencies, should establish and administer minimum competency requirements for bank staff who deal with consumers, prepare Key Facts Statements or advertisement materials, or market the bank's services and products.



- Consideration should be given to developing a law on debt collection operations.
- There should be regulations covering disclosure of personal information to government authorities.
- There should be a specific legal framework that regulates the operation of the public credit registry as well as all private credit bureaus.
- Banks should be required to establish an internal procedure to handle consumer complaints.
- There should be a dispute resolution mechanism either at State or Entity level with jurisdiction over all types of consumer-related banking services disputes. A Central Bank Commission should establish a working group to evaluate the most viable institutional arrangement in BiH.
- A national program on financial education should be developed, including mechanisms to implement financial education initiatives in schools.
- Consumer awareness of financial issues should be improved through actions from government authorities and consumer NGOs.
- Consumer associations need to be strengthened, with larger and more stable sources of funding and better institutional capacity, in order to play a more salient role in respect of consumer protection issues.
- A national survey of financial literacy should be conducted as a first step in the development of a national program of financial education.
- The Banking Agencies and the Competition Council should be required, by law, to consult regularly with one another so as to ensure the establishment, application and enforcement of consistent policies regarding banking regulation and market competition.

## Good Practices: Banking Sector

SECTION A	CONSUMER PROTECTION INSTITUTIONS
<p><b>Good Practice A. 1</b></p>	<p><b><i>Consumer Protection Regime</i></b></p> <p><b>The law should provide for clear consumer protection rules regarding any banking product or service, and all institutional arrangements should be in place to ensure the thorough, objective, timely and fair implementation and enforcement of all such rules.</b></p> <ul style="list-style-type: none"> <li><b>a. Specific statutory provisions need to create an effective regime for the protection of any consumer of a banking product or service.</b></li> <li><b>b. Either a general consumer agency or a specialized agency should be responsible for implementing, overseeing and enforcing consumer protection, as well as collecting and analyzing data (including complaints, disputes and inquiries).</b></li> <li><b>c. The law should provide and not prohibit a role for the private sector, including voluntary consumer protection organizations and self-regulatory organizations, regarding consumer protection in general and in banking products and services in particular.</b></li> </ul>
<p><b>Description</b></p>	<p>The only consumer protection rules, as such, in BiH are contained in the State-level <b>Consumer Protection Act</b> of 2005. Although not stated in this Act, the apparent power of the State to legislate in this field comes from the Constitutional responsibilities of “the Institutions” of BiH in respect of foreign trade.<sup>19</sup> Unlike the case of RS which provides in its Constitution that “the Republic shall ensure consumers protection”<sup>20</sup>, there is no such provision in either the Constitution of BiH or the Constitution of the FBiH.</p> <p>The Consumer Protection Act “governs the relations between consumers ... and traders in the territory of Bosnia and Herzegovina.”<sup>21</sup> As is true in the EU and elsewhere, a “consumer” is defined as “any natural person who buys, acquires or uses products or services for his or her personal needs or for the needs of his or her household.”<sup>22</sup> And, the term “trader” is defined as “any person<sup>23</sup> who directly or acting as intermediary of other persons supplies products or services to the consumer.”<sup>24</sup> “Product” means “any thing being the result of human activity that is intended for consumers ... (and) supplied ... in the course of a commercial activity.”<sup>25</sup> And, “service” means “any activity intended to be offered to consumers.”<sup>26</sup> Thus, being broadly focused on all manner of commercial products and services, the Act clearly covers the protection of any consumer who is offered or supplied any product or service by a commercial bank.</p> <p>With the exception of Chapters 11 and 16 of the Consumer Protection Act dealing with “consumer credit”, however, there is no specific reference in this Act to any banking product or service. Concerns exist, though, regarding the definition of “consumer credit agreements”</p>

<sup>19</sup> See Paragraph 1 (b) of Article III of the Constitution of BiH. Support for this proposition comes from the fact that the Ministry of Foreign Trade and Economic Relations is *the* only Ministry named to lead efforts regarding consumer protection at State-level and both Entities have chosen to follow suit by having respective Departments in their Ministries of Trade (in RS it is the Ministry of Trade and Tourism) deal at least with certain aspects of consumer protection as they relate to registering, contracting and providing modest stipends to consumer associations.

<sup>20</sup> See Article 53 of the RS Constitution

<sup>21</sup> Article 1 (1) of the Consumer Protection Act

<sup>22</sup> Ibid, Article 1 (3)

<sup>23</sup> By the law of BiH, the term “person” means either a legal or natural person.

<sup>24</sup> See Article 1 (5) of the Consumer Protection Act

<sup>25</sup> Ibid, Article 1 (7)

<sup>26</sup> Ibid, Article 1 (10)

	<p>contained in Article 52 of the Consumer Protection Act. Unlike in the EU and elsewhere, there are no minimum and maximum limits on the total amount of credit that can constitute a consumer credit.<sup>27</sup> Also, concerns are raised that the definition is too broad by, at least implicitly, including credits for any unspecified purposes. Finally, by Article 53 of the Consumer Protection Act, the provisions of Chapter 11 do not apply to credit agreements where the credit is intended to purchase, to rent or to renovate immovable property. Although the EU Consumer Credit Directive applies neither to credit agreements secured by a mortgage or by a right related to immovable property, nor to credit agreements with the purpose to acquire or retain property rights in land or in a building<sup>28</sup>, there is no restriction on consumer credits for purposes of renting dwelling premises, constructing such premises or renovating or improving such premises.</p> <p>Furthermore, by Article 1 (2) of the Consumer Protection Act, the “relevant provisions of the law regulating to obligations in Bosnia and Herzegovina ... apply to ... the field of consumer protection not regulated by this law”, with whatever provision is most protective for consumers prevailing and applying. It appears, however, that the Consumer Protection Act was drafted without a clear sense of the provisions of the <b>Law on Obligations</b>, let alone which provisions of this Law are “relevant”. The Law on Obligations is essentially the same as the Law on Obligations that prevailed throughout the former Yugoslavia<sup>29</sup> and it was taken over both by FBiH<sup>30</sup> and RS<sup>31</sup>.</p> <p>In addition, notwithstanding the State’s admonition that the Entities “harmonize their laws and regulations on consumer protection” within six months of the effectiveness of the State’s Consumer Protection Act, neither Entity has taken any legislative steps to do so.<sup>32</sup> There are, thus, no statutes at Entity level that focus on consumer protection, as such, whether in general or regarding any segment of Entity banking sector activity in particular.</p> <p>In addition, as is indicated below, there are numerous provisions of the Law on Obligations which have a direct bearing on matters of consumer protection in banking services.</p> <p>It would be wrong to conclude, therefore, that BiH and the two Entities have legal regimes that provide clear consumer protection rules regarding any banking service or product.</p> <p>As far as relevant institutions are concerned, the Consumer Protection Act provides a listing of the so-called “Competent Authorities” for consumer protection in BiH. These are:<sup>33</sup></p> <ol style="list-style-type: none"> <li>a) the Ministry of Foreign Trade and Economic Relations of BiH (hereinafter the Ministry) ;</li> <li>b) the Consumer Ombudsman of BiH;</li> <li>c) the Consumer Protection Council of BiH;</li> <li>d) the Competition Council of BiH;</li> <li>e) “Competent bodies”<sup>34</sup> of the Entities and Brčko District;</li> <li>f) the Competition and Consumer Protection Offices in the FBiH and RS (hereinafter the CCPOs of the Entities);</li> <li>g) Consumer associations;</li> </ol>
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<sup>27</sup> By Article 2, 2 c) of the Consumer Credit Directive 2008 of the EU, that Directive does not apply to credit agreements involving a total amount of credit less than 200 Euros or more than 75,000 Euros.

<sup>28</sup> EU Consumer Credit Directive 2008, Article 2, 2 a) and b)

<sup>29</sup> **This Law on Obligations deals with such important principles as the autonomy** of will, the equality of parties in contractual relations, obligations resulting from contracts, and the prohibition of abuse of rights,. They also regulate issues relevant for the comprehensive and timely consideration of risks that may have an impact on the economic well-being of contractual parties whether during the stage of negotiation, the phase of contract conclusion or the execution of the contractual terms. Other issues in these laws dealing with contract interpretation, usury, credit, surety, deposit, business operations with securities, the making of offers, and substantial deceptions, among other matters, are also of relevance to consumer protection.

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<sup>31</sup> Official Gazette of RS, No. 17/93, 3/96, 39/03 and 74/04

<sup>32</sup> Ibid, Article 130 (1)

<sup>33</sup> Ibid, Article 98.

<sup>34</sup> The Law neither indicates what these bodies are, nor what authority decides which ones they are.

	<p>h) Educational institutions and the media; and i) Market Inspection and other bodies, according to the law.<sup>35</sup></p> <p>As the apparent lead institution, the Ministry performs the following activities related to consumer protection:</p> <p>a) the coordination of the completion of the National Annual Consumer Protection Program;<sup>36</sup> b) the coordination of the work and activities related to consumer protection with the “competent bodies” of the Entities and Brčko District, the Consumer Protection Council of BiH, the Competition Council of BiH and the Entity CCPOs;<sup>37</sup> c) the monitoring of “the situation” in the sphere of consumer protection and the submission of proposals to the “competent authorities” of changes in legislation related to consumer protection;<sup>38</sup> d) the cooperation and exchange of information and data with all subjects in charge of consumer protection;<sup>39</sup> and e) the keeping of records on the public authority (i.e. State) allocations to the Union of the Bosnia and Herzegovina Consumer Associations.</p> <p>With limited resources at its disposal and lack of specialists in financial services, the Consumer Ombudsman is hard pressed to respond to consumer inquiries, complaints and disputes regarding banking issues, let alone to carry out significant business-conduct supervisory functions regarding banks.</p> <p>In addition, as indicated above, the Consumer Protection Act refers to the “Competition and Consumer Protection Offices (CCPOs) of the Entities” and charges them with responsibility for preparing annual consumer protection programs “in cooperation with the consumer associations” and in coordination with the National Annual Consumer Protection Program.<sup>40</sup> These same CCPOs are also required by the Consumer Protection Act:</p> <ul style="list-style-type: none"> <li>• “to perform all duties related to transfer of public authorities to the consumer associations and monitoring of their work in close cooperation;</li> <li>• to establish a registry of consumer associations to which the transferred public authorities are assigned;</li> <li>• to ‘follow’ the implementation of the annual consumer protection program;</li> <li>• to inform the public about infringements of consumer rights and interests, and</li> <li>• to cooperate and exchange all the necessary information with consumer protection holders as referred to in Article 98 of this Act” (i.e. the so-called “Competent Authorities” for consumer protection in BiH).<sup>41</sup></li> </ul> <p>Article 129 of the Consumer Protection Act acknowledges that the CCPOs were to be disbanded as of January 1, 2006, with “competent Entity bodies” performing “operations in the field of consumer protection ... currently assigned to the CCPOs of the Entities”. The State-level Law on Competition also provided that the consumer protection “competencies” of the CCPOs would, as of 1 January 2006, likewise be “exercised by the respective bodies established by the regulations on consumer protection.”<sup>42</sup></p>
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<sup>35</sup> It is unclear what “other bodies” consist of and whether “the law” in this instance is that of the State, the Entities or all three.

<sup>36</sup> The 2009 Annual Program has some 100 items deserving of attention, none of which focus on the delivery of banking products and services, as such

<sup>37</sup> Few, if any, examples of such coordination exist, at least in respect of consumer protection in banking services.

<sup>38</sup> It is unclear how this monitoring role is carried out on a practical basis with any regularity. And, there is no evidence that the Ministry has ever monitored the situation in the sphere of consumer protection in banking products and service. Nor has it ever submitted proposals to the “competent authorities” of changes in legislation related to consumer protection generally and related

<sup>39</sup> Again, it is unclear how the Ministry’s role of coordination and exchange of information is carried out on a practical, daily basis. Furthermore, there have been few, if any, examples of exchanges regarding consumer protection in banking services.

<sup>40</sup> See Article 110 (1) of the Consumer Protection Act

<sup>41</sup> Ibid, Article 110 (2)

<sup>42</sup> See Article 57 (3) of the Act on Competition

With the exception of Entity regulations dealing with the assignment of certain Entity projects and programs to consumer associations and the highly modest financing from the Entity budget of such associations as are registered within respective Departments of the Entity Ministries of Trade, there still are no regulations on consumer protection in either Entity that establish such “respective bodies” in any robust fashion.

Entity-level **Laws on Banking Agency**, adopted in 1996, established the Banking [Agency of the Federation of Bosnia and Herzegovina](#) and the [Banking Agency of the Republika Srpska](#). The Banking Agencies are the principal banking regulators in their respective territories and oversee and regulate the banking industry. They are independent institutions of the respective Entities’ governments.

The FBiH and RS Laws on Banking Agency are virtually identical<sup>43</sup> and the Banking Agencies’ activities in respect of commercial banks (as defined in the respective Laws on Banking Agency) fit broadly within the following categories:

- **Regulation:** Issuing licenses for banks; approving banks’ managing staff; monitoring banks’ operations; revoking banks’ licenses in case of violations of relevant law; monitoring changes to the capital and/or organizational structure of banks; supervision of banks’ restructuring or bankruptcy proceedings.
- **Enforcement:** Imposing appropriate punitive measures in case of violations of banking laws or regulations.<sup>44</sup>
- **Legislation:** Drafting and adopting by-laws and decisions relevant to the Law on Banking Agency, Law on Banks and other laws under the Banking Agencies’ jurisdiction.

Each Entity, likewise, has its own **Law on Banks** which provides the fundamental framework for banking regulation and was passed in similar form [in the FBiH in 2000](#) and [the RS in 2003](#). These laws provide more details than the Laws on Banking Agency regarding the supervision of banks in each entity. Included in these laws are requirements regarding banks’ ownership structures, corporate governance arrangements and reporting requirements, as well as the consequences to banks of legal infractions.

Although, given the general ambit of its provisions, it is perhaps not surprising that the Consumer Protection Act makes no mention of the Banking Agencies, no government authorities are more competent at Entity-level when it comes to matters of consumer protection in banking services.

A description of the government institutions and NGOs having any relevance to consumer protection in banking is provided in the Summary of Institutional Arrangements above. To date, however, there has been minimal cooperation and coordination between these various stakeholders to advance consumer protection in any realm, including that of banking products and services.

In summary, neither at State-level nor at Entity-level is there any general consumer protection agency or any specialized consumer protection agency dealing with banking products and services responsible for implementing, overseeing and enforcing consumer protection, as well as collecting and analyzing data (including complaints, disputes and inquiries).

Although making no reference to the private sector, as such, nor to any self-regulatory organization, the Consumer Protection Act does provide a role for voluntary consumer associations regarding consumer protection at least in general, if not to banking products

<sup>43</sup> The [RS Law on Banking Agency](#), however, does not explicitly mention the micro-credit sector, whereas the FBiH [Law on Banking Agency](#) does specifically refer to the micro-credit sector and its oversight.

<sup>44</sup> These violations include those related to anti-terrorism funding statutes and/or any activity which may be “obstructive of the peace implementation process as pursued under the aegis of the [General Framework Agreement for Peace in Bosnia and Herzegovina](#).”

	and services in particular.
<b>Recommendation</b>	<p>Consideration needs to be given to making amendments to the existing State-level Consumer Protection Act. Specific statutory provisions need to create an effective regime for the protection of any consumer of a banking product or service. The 2008 EU Directive on Consumer Credit should serve as a model for these amendments. These could repeal Chapters 11 and 16 of the existing Consumer Protection Act and result in a separate, State law on Consumer Credit. The Entities should, likewise, take steps to legislate in this field, in harmony with State law (the State law could also allow for the provisions of the EU Directive on Consumer Credit to be implemented by Entities' financial sector laws; RS has already included provisions of this Directive in the amendment to the RS Law on Banks).</p> <p>At the same time, detailed cross-references to all relevant provisions in the Law on Obligations need to be provided in an amended Consumer Protection Act and the numerous vague provisions in the existing Act must be made clear.</p> <p>In proposing amendments to the Consumer Protection Act, the drafting team needs, among other things, to answer the following questions:</p> <ol style="list-style-type: none"> <li>a) What provisions of the Law on Obligations need to apply and what other ones do not (in Article 1 (2))? (The ones that do need then to be incorporated in the appropriate Chapters of the Act.)</li> <li>b) What "requirements" of consumer protection are referred to in Article 5, what specific "competent authorities" must take these into account and what consequences are to attach to any such "competent authority" that does not comply?</li> <li>c) What constitutes "good business practices" in Article 7?</li> <li>d) What "Law and special regulations" are referred to in Article 11 (7)?</li> <li>e) What specific "general provisions on contractual relations" are referred to in Article 12?</li> <li>f) What "laws and other regulations" are referred to in Article 29 (1)?</li> <li>g) What constitutes "good business practices" in Article 29 (4)?</li> <li>h) How, if at all, "unfair advertisements" in Article 31 (1) differ from "improper advertising" referred to in Article 29 (4) and exemplified in (4), (5) and (6) of Article 29?</li> <li>i) What are the "competent bodies" referred to in Article 31 (2)?</li> <li>j) What is the "authorized body for information" mentioned in Article 32?</li> <li>k) What constitutes "good time" in Article 44 (1) and in Article 45 (1)?</li> <li>l) Must the prevailing practice of commercial banks in using bills of exchange in credit agreements truly cease, as is apparently required by Article 62 (2)?</li> <li>m) What constitutes "notification" and "at his disposal" in Article 93 (4)?</li> <li>n) What constitutes "conscientiousness" and "good business practices" for purposes of Article 95 c)?</li> <li>o) How high is "inappropriately high" in Article 96 (g)?</li> <li>p) In an expansion of Article 97 or elsewhere, what dispute resolution method or methods must apply in respect of contracts concluded in BiH between a BiH citizen</li> </ol>

	<p>and a BiH bank, with reference to mediation as opposed to the courts?</p> <p>q) How is the monitoring role to be carried out on a practical daily basis under Article 99 c)?</p> <p>r) How is cooperation and the exchange of information role to be carried out on a practical daily basis under Article 99 d)?</p> <p>s) How does the role of the Consumer Ombudsman “to investigate market practices directed to consumers on his/her own initiative or following complaints” differ in any way from the role of the Entity Inspectorate and which office takes precedence?</p> <p>t) To what extent, if at all, may the decisions of the Consumer Ombudsman under Article 101 d) be appealed?</p> <p>u) What are the “alternative dispute resolution mechanisms” that the Consumer Ombudsman is obliged “to propose and initiate” with a view to settling consumer disputes under Article 101 h)?</p> <p>v) Does the Consumer Ombudsman or a party to the dispute have power to initiate alternative dispute resolution proceedings without the consent of all parties?</p> <p>w) What is the meaning of “to mitigate” in Article 103 b)?</p> <p>x) Who decides what problems are of “major concern” applying what criteria, in the final sentence of Article 104?</p> <p>y) How is the “one representative from organization of entity consumer” to be chosen under Article 106 (1) m)?</p> <p>z) What is the meaning of “follow” in Article 110 (2) c)?</p> <p>aa) When must public tenders be let in accordance with Article 114? (Presumably not with merely a few weeks remaining in any financial year.)</p> <p>bb) What happens in the event that one of the numerous “competent bodies” set out in Article 98, items a) to e) and i) fails to agree in terms of supervising the implementation of the Consumer Protection Act or acts at cross-purposes under Article 117?</p> <p>cc) Is injunctive relief under Article 120 quite rightly not possible to any individual consumer who has been harmed?</p> <p>dd) To what degree do the penalties set out in Chapter 20 properly apply to service providers, as opposed to merchants selling products?</p> <p>ee) What “competent bodies” are referred to in Article 130 (2) and what specific “regulations” are envisaged for them in order for the Consumer Protection Act “to be implemented”?</p> <p>ff) What is meaning of paragraphs (2) and (3) of Article 130 and are these provisions valid (i.e. how can obligations be imposed by one institution on any other, unless the former has all due authority to do so)?</p> <p>Consideration also needs to be given to strengthening the institutional framework for banking consumer protection by adopting one of the following options:</p> <ul style="list-style-type: none"> <li>• expanding the role of the Banking Agencies regarding banking consumer protection while leaving resolution of consumer banking disputes to mediation;</li> </ul>
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	<ul style="list-style-type: none"> <li>• establishing a separate Unit within the Consumer Ombudsman devoted exclusively to financial services issues, and with independence and a status equivalent to the Banking Agencies as the business conduct regulator in banking services;</li> <li>• creating a new financial/banking consumer protection agency or financial/banking ombudsman, with jurisdiction and staff focused exclusively on consumer protection in financial/banking services and with independence and a status equivalent to the Banking Agencies so that oversight of business conduct in the provision of financial/banking services to consumers is carried out effectively, including the control of abusive lending practices, and consumer inquiries, complaints and disputes are handled effectively and professionally.</li> </ul> <p>Among other things, such a consumer protection agency could be charged with responsibility for:</p> <ol style="list-style-type: none"> <li>a) enforcing the consumer credit laws, including a possible future State consumer credit statute;</li> <li>b) planning and implementing public education campaigns for the widest possible audience of consumers regarding their rights and responsibilities as consumers of financial/banking products, including in respect of fraud, deception, and unfair practices employed upon them, through multifaceted communications and outreach programs using print, broadcast, and electronic media;</li> <li>c) protecting consumers from deceptive or unsubstantiated advertising of financial products, including advertising that makes claims which are difficult for consumers themselves to evaluate;</li> <li>d) protecting consumers through a variety of law enforcement activities, including ensuring compliance with orders entered in consumer protection cases;</li> <li>e) conducting investigations and prosecuting civil actions to stop fraudulent, unfair, or deceptive marketing and advertising practices in the provision of financial/banking products and services;</li> <li>f) enforcing consumer protection laws, rules, and guidelines in respect of financial/banking products and services; and</li> <li>g) collecting and analyzing data in order to target law enforcement and education efforts and measure the impact of activities related to the agency's consumer protection mission.</li> </ol> <p>It is recognized, however, that the establishment of any such agency is unlikely in the near-term. And, until then, efforts are required to build the capacity of existing institutions to deal effectively and professionally with matters of consumer protection in banking services.</p> <p>As indicated, this means considering the expansion of the Banking Agencies' mandates to include consumer protection. This has already been implemented by the RS Banking Agency. Given this context, it will be important to develop a consistent approach for financial consumer protection regulation and supervision applicable to both Banking Agencies and increased coordination and exchange of information in this area.</p> <p>It would also undoubtedly contribute to improved efficiency<sup>45</sup> of the BiH banking system to further streamline the bank supervision into a single State-level Banking Agency for all of BiH.<sup>46</sup></p>
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<sup>45</sup> The Decisions, Directives and practices of the Banking Agencies in both Entities are closely harmonized in those instances where they are not the same. The duplication of scarce talent required to supervise the same commercial banks throughout BiH is costly and the requirement that these banks have to report to two rather than one supervisor inevitably results in inefficiencies in supervisory terms, as well as in terms of the duplication of the reporting responsibilities of the commercial banks.

<sup>46</sup> But see Article 68. of the Constitution of the Republika Srpska, which makes it responsible for regulating the banking system within its territorial borders.



	<p>Consideration should also be given to:</p> <ul style="list-style-type: none"> <li>b) improving the legal framework for dispute resolution<sup>47</sup> and drafting a law on debt collection, as well as other matters referred to in separate sections below;</li> <li>c) funding all agencies dealing with financial/banking consumer protection,<sup>48</sup> at least in significant part, from the financial/banking services industry so that qualified banking, legal and other professionals can be employed;</li> <li>d) requiring all relevant institutions, including the Consumer Ombudsman, the Banks' Association, the Banking Agencies, the Entity-level Inspectorates and any relevant consumer NGOs to meet regularly in an effective consultative council, under the chairmanship of the Central Bank (hereinafter called the Central Bank Commission), in order to address and solve issues of consumer protection in banking services in a coordinated fashion;</li> <li>e) improving the transparency, availability and quality of data of relevance to consumer protection in banking services,<sup>49</sup> including consumer complaints and their treatment, as well as relevant recommendations made, and decisions taken, by the Consumer Ombudsman, the Banks' Association, the Banking Agencies, Entity-level Inspectorates and any other relevant institutions, including the courts; and</li> <li>f) seeking additional funding for the NGO community.<sup>50</sup></li> </ul>
<b>Good Practice A. 2</b>	<p><b><i>Codes of Conduct for Banks</i></b></p> <ul style="list-style-type: none"> <li><b>a. There should be a principles-based, statutory code of conduct for banks that is devised in consultation with the banking industry and if possible with consumer protection associations, and is monitored by a statutory agency or an effective self-regulatory agency.</b></li> <li><b>b. Every bank, acting alone and together, should publicize and disseminate this statutory code of conduct to the general public through appropriate means.</b></li> <li><b>c. The statutory code should be augmented by voluntary codes of conduct for banks on such matters as facilitating the easy switching of consumers' current accounts and establishing a common terminology in the banking industry for the description of banks' charges, services and products.</b></li> </ul>
<b>Description</b>	<p>There is no statutory code of conduct for BiH banks. Nor is there any statute or regulation at State- or Entity-level providing that in order to promote the protection of consumer rights and the observance of the law, banks and the Banks' Association may develop and implement the enforcement of a "good practice code".</p> <p>The Banks' Association has, however, promulgated a so-called voluntary "Code of Ethics"<sup>51</sup> (hereinafter the Code) which has been endorsed by all member-banks. Its avowed purposes are: (i) to set forth standards of good behavior and open communications between customers and banks; (ii) to raise the image of banking in society; and (iii) to promote responsibility, transparency and professional conduct in the BiH banking industry. The Code expressly took effect as of 13 December 2005 and the Banks' Association members were required to comply with its provisions as of 31 December 2006.<sup>52</sup> It has, however, never been monitored by the Banking Agencies or any other statutory agency and it is not at all clear to what extent the Banks' Association, itself, can properly be termed "an effective self-regulatory agency".<sup>53</sup></p>

<sup>47</sup> For a discussion of Formal Dispute Settlement Mechanisms, see Good Practice E. 2 below.

<sup>48</sup> This means increasing allocations in the 2010 National Consumer Protection Program and subsequently, as well as obtaining important additional funding from the banking industry, as well as the EU and other donors.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> See: [www.ubbih.ba](http://www.ubbih.ba) for the text of the Code on the Banks' Association website.

<sup>52</sup> See Paragraph 1 of Part III of the Code dealing with Transitional and Final Provisions.

<sup>53</sup> To date, there have been no cases brought before the Court of Honor of the Banks' Association and no disciplinary action taken, however mild, in respect of any bank that may have failed to apply any one or more provisions of the existing Code, notwithstanding the fact that by accepting the Code, a bank agrees to apply the Code's practices as "the minimum".

The Code is expressly meant to standardize relationships between a bank and its customers (legal entities and consumers), as well as with other banks. But, since it is clearly an extension to the laws, regulations and instructions imposed by the Banking Agencies and other authorized bodies in place, it is, therefore, for each bank to adopt and apply as it sees fit. That said, there are at least potential consequences if, once endorsed by a bank, the bank fails to abide by it.

Special rules in the Code govern the relationship of a bank with a consumer. These require a bank, among other things, to:

- enable its staff to be aware of products and services offered by the bank;
- ensure that its staff offer products or service that best correspond with the concrete needs of individual consumers;
- apply standardized terminology with generally accepted meaning, so that any consumer can compare similar products or services offered by different banks;
- provide any consumer accurate and useful information related to the characteristics of products or services on offer, as well as to the terms, tariffs and decisions applied;
- request all relevant information about the customer and his or her needs and financial limits, depending on the product or service the consumer request;
- ensure that there are no vague terms in its business policy documents, application forms and access contracts, which would impose undefined commitments on consumers thereby bringing uncertainty to the consumer regarding his or her rights and obligations;
- act efficiently and with due attention when fulfilling commitments towards its consumers;
- to train its staff to comply strictly with the rules of banking secrecy and, in general, to act with full discretion in their contacts with consumers;
- employ its best efforts to avoid conflict of interests and, in any situation in which a conflict is inevitable, to enable equal treatment to all consumers;
- to treat all data regarding a consumer as a business secret, even if he or she no longer has the status of a customer;
- ensure that all personal data about a consumer's accounts is not revealed without the direct request of the consumer or with his or her explicit approval, except in cases clearly stated in the law;
- have reliable customer identification, in order to protect customers, for individual transactions, including personal and account data disclosure;
- employ data about a consumer and his or her accounts only for the purpose of enabling effective management of the consumer's account, as well as other services provided to consumer;
- permit a consumer the right to have access to his or her data in order to check on its accuracy and, potentially, to correct any incorrect facts.
- prevent unauthorized access to the bank's information and data systems so as to protect consumers' interests (as well as those of the bank);
- try to correct any error within reasonable period of time and without delay, in the event a consumer informs the bank of an error in the way the bank is operating; and
- show readiness to discuss with the consumer the issue of the consumer's financial difficulties in an effort to find a mutually acceptable arrangement, in the event the consumer informs the bank as soon as possible about any such financial difficulties.

By the terms of the subsequent chapter of the Code dealing with banking information and marketing, each bank is required to:

- a) exchange accurate and timely information between it and its customers, so as to

	<p>build a good business relationship based on openness and mutual confidence;</p> <ul style="list-style-type: none"> <li>b) be clearly identified in the market, implying “personal communication” with its consumers via the media, including the internet;<sup>54</sup></li> <li>c) offer services precisely and truthfully concerning at least “their main characteristics”;</li> <li>d) make available, in each branch office, the fee for banking services, the bank’s interest rates and “other information”;</li> <li>e) provide the Banks’ Association the general data referred to above, as well as any changes thereto, so that this information is “available to the public in a uniform way;”<sup>55</sup></li> <li>f) ensure that banking communications, advertisements and other marketing activities are clear, accurate and reliable and do not mislead the public, breach sound business practices or harm others;<sup>56</sup> and</li> <li>g) state clearly in any public advertising that claims, for example, that its size is “the largest”, any of its products and services are “the best” or its general manager “the most experienced and successful”, etc, the objective basis upon which any such statement can accurately be made, as well as the name, if any, of a respectable domestic or foreign organization or publishing firm or some independent public media research that has made this claim, as well as the time period in question in respect of the claim.<sup>57</sup></li> </ul> <p>In respect of the settlement of disputes, and the measures to apply in case of a breach of the Code, the Code provides that:</p> <ul style="list-style-type: none"> <li>a) If possible, a bank should seek to settle disputes with other bank(s) independently and in good faith. If not possible, disputes should be settled either “in arbitration or at court”.</li> <li>b) If any dispute or misunderstanding occurs with a bank <i>that has accepted the Code</i>,<sup>58</sup> the bank shall be obliged to try to find solution by mutual dialogue. If a direct dialogue of two or more parties does not result in a solution, banks are encouraged to try to resolve the dispute by intermediation of the Banks’ Association.</li> <li>c) Any breach of the Code shall be resolved according to the rules of the Association’s Court of Honor.</li> <li>d) All parties in any proceeding before the Court of Honor shall be bound by any decisions in such proceedings made by this Court.</li> <li>e) When there is a reasonable doubt that a bank has breached the provisions of the Code or the law, all interested parties, including the media, any consumer and the public, shall have right to ask for a statement from the bank and to receive it within 10 days.</li> <li>f) In the event the bank ignores the request for such a statement or does not provide “adequate evidence” of its business according to the Code or provisions of law, the interested party may file charges against the bank with the Banks’ Association’s</li> </ul>
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<sup>54</sup> According to the Communications Regulatory Agency of Bosnia and Herzegovina, the estimated internet usage rate in 2008 was 34% of the population, a significant increase relative to 2007 (27%). In terms of internet subscribers, 20% were from Sarajevo and 16% from Banja Luka.

<sup>55</sup> It is unclear how this information is to be made readily available except by means of the Banks’ Association’s website.

<sup>56</sup> In these respects, the Code encroaches on and to some extent duplicates the legal requirements set out in Article 29 of the Consumer Protection Act

<sup>57</sup> Compare Article 30 of the Consumer Protection Act.

<sup>58</sup> The words in italics here clearly imply that a bank must take some independent action of its own in positively endorsing the Code before the bank can be taken to have accepted the Code. No such action has, however, been taken to date by any bank.

	<p>Court of Honor.</p> <p>g) Within the deadline prescribed by the procedures of the Court of Honor,<sup>59</sup> this Court shall: (a) impartially determine the facts, (b) consider whether the charges are justified, and (c) present its decision.</p> <p>h) After any determination of responsibility on the part of a bank, the Court of Honor shall apply one of the following measures:</p> <ul style="list-style-type: none"> <li>- a warning to the bank to be published in the bulletin of the Banks' Association;</li> <li>- a reprimand to the bank to be published in the media at the cost of the bank against which the reprimand has been issued;</li> <li>- expulsion from membership in the Banks' Association; or</li> <li>- any other measure anticipated by the Banks' Association's deeds.</li> </ul> <p>i) Expulsion of a bank from membership of the Banks' Association may only be made by the Court of Honor after it has determined that:</p> <ul style="list-style-type: none"> <li>- the bank has previously breached the Code which resulted in a public warning; (and/or<sup>60</sup>)</li> <li>- the breach committed by the bank has fundamentally hurt the reputation of the banking system, its institutions or any specific member or members of the Banks' Association.</li> </ul> <p>Aside from the fact that the provisions of the Code are not founded in law, various problems arise. In the first place, the Code appears not to have been formally endorsed by any bank and its provisions are apparently neither internalized nor applied by any bank. The concern has to be that the words of the Code are merely ones of grand intentions, having little or no meaning in practical terms. Without signing the document or in some other way formally accepting its provisions, it appears difficult to argue that any member-bank can be taken to have agreed with the Code. As a result, it would seem that no bank has left itself open to the possibility that it might be accountable to consumers, the Banks' Association or any other relevant institution, including the applicable Banking Agency, for the faithful application of the Code in the bank's day-to-day operations. As a result, in all practical terms, the provisions of the Code do not in any way create obligations for any bank.</p> <p>Secondly, the Code is not publicized or disseminated, whether by banks or the Association, except on the website of the Association. Thus, the reach of all efforts at publication and dissemination is limited to those relatively few consumers who, themselves, have access to the internet and seek out the Code on the website. And thus, contrary its Preamble, the Code does not, and cannot possibly, provide most consumers with "open communication", a "raised image about banking" and the "advancement of responsibility, transparency and professional conduct". Also, as indicated below, the Code does not cover all matters it should.</p> <p>It is hardly surprising, therefore, that the application of any Code "requirement" by an individual bank is in no way monitored by the Banks' Association, the pertinent Banking Agency or any other public office. The Banks' Association cannot be considered an "effective self-regulatory agency" in these or any other respects.</p>
<b>Recommendation</b>	<p>The Banks' Association should be encouraged to draft a revised and updated Code of Ethics for formal endorsement by all member banks. Among other things, and in addition to matters already addressed, consideration should be given to having the revised Code also:</p> <ul style="list-style-type: none"> <li>• facilitate the easy switching of consumers' current accounts;</li> <li>• establish precise, common terminology in the banking industry for the description of banks' charges, services and products;</li> <li>• set minimum standards regarding the information to be provided in any banking</li> </ul>

<sup>59</sup> See the Rules of Procedure for the Banks' Association's Court of Honor, dated 17 February 2006.

<sup>60</sup> It is unclear from the text whether "and" or "or" is the correct word here.

	<p>advertisement;</p> <ul style="list-style-type: none"> <li>• establish uniform standards in respect of various matters, including the marketing and advertising of services, the handling of delinquent debt, and the training of a lender's employees;</li> <li>• establish an effective and clear procedure to deal with customer complaints, which has to be observed and disclosed, up-front, to the consumer;</li> <li>• deal with the consideration of inquiries and the procedures regarding claims, including required efforts to reach pre-trial amicable resolution of disputes and clearly structured options for any consumer who complains to his or her banker after all voluntary means of settlement have proven futile, including, in particular, the process of initiating action with recourse to a mediation service, the courts or a possible future alternative dispute resolution mechanism;</li> <li>• provide for how the Code must be published and disseminated far more expansively and effectively, including its publication on the wall of the lobby of every branch office of a commercial bank in BiH and delivery to every new customer;</li> <li>• require the provision to the consumer of a package of necessary information on consumer credit before any granting of a credit;</li> <li>• require clear language in all information materials and contracts;</li> <li>• require the provision of a typical contract at the request of any consumer;</li> <li>• establish uniform standards regarding information to be provided to the consumer on specific contractual terms, including those dealing with interest rate adjustments, general conditions in respect of any account or consumer credit and the overall cost of credit;</li> <li>• ensure that all information regarding pricing and terms of services (including interest rates, maturity periods and commissions) are available at all of the offices of any bank and submitted on a regular basis to the Banking Agencies as well as the Banks' Association;</li> <li>• prohibit the changing, without preliminary written consent, of any essential condition of a credit, if such a change would entail any adverse consequence for the consumer;</li> <li>• require the provision of information regarding floating rate adjustment risk; and</li> <li>• require the provision of information regarding any possible foreign currency risks.</li> </ul> <p>This should be more than a description of what, ideally, should happen. It should rather be a plan to make things happen.</p> <p>Consideration might also be given to establishing a principles-based, <b>statutory</b> code of conduct for banks that is devised by a team under the supervision of the Central Bank Commission. Once enacted, this would then need to be strictly monitored by the Banking Agencies to ensure compliance with the law.</p> <p>Minimum standards for banks need to be clearly agreed, articulated and applied in order to limit the risk of negative experiences with unethical behavior eroding consumer confidence in the banking system. Such standards will also improve the competitive climate between banks, for instance by reducing misleading information given to consumers about a bank's products or the products of its competitors.</p> <p>The power of dialogue should not be underestimated, initially between banks, but then, as discussion develops, between banks and consumer groups and government. As European experience has demonstrated, consensus stemming from dialogue about consumer protection issues is the most powerful tool to enforce any given set of rules.</p> <p>An updated Code of Ethics (whether in place voluntarily or by statute) that is widely disseminated, generally understood and enthusiastically applied would bring many advantages to banks and consumers. On the one hand, customers would be assured that banks could not violate essential principles without facing consequences. On the other hand,</p>
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	<p>the “best” banks in these respects would quickly stand out and presumably benefit from greater business as a result. Although a series of what might be termed “mild” violations of principles would perhaps lead to a high number of cases with a future alternative dispute resolution mechanism, more serious violations should lead to a bank being deprived by the Banks’ Association from advertising its adherence to the Code or from membership in the Association itself. In an increasingly competitive market, banks will consider this outcome as undesirable since a general reputation for unethical practice would obviously hurt business.</p>
<b>SECTION B</b>	<b>DISCLOSURE AND SALES PRACTICES</b>
<b>Good Practice B. 1</b>	<p><b><i>Know Your Customer</i></b></p> <p><b>When making a recommendation to a consumer, a bank should gather, file and record sufficient information from the consumer in order to ensure that the bank’s recommendation, product or service is appropriate to that consumer. The extent of information the bank gathers should: (a) be appropriate to the nature and complexity of the product or service being proposed to or sought by the consumer; and (b) enable the bank to provide a professional service.</b></p>
<b>Description</b>	<p>While some banks in BiH have internal rules requiring the application of these practices, these are apparently not yet widespread or routine. The only reference to these sorts of practices in the Banks’ Association’s Code of Ethics is in Rule II A) 3 of the Code which states, in part, that: Banks “will ...request information about the situation of the customer, its needs and limits”. There are no statutory requirements in these respects.</p>
<b>Recommendation</b>	<p>When making a recommendation to a consumer, any BiH commercial bank should be required, by law, to gather, file and record sufficient information from the consumer in order to ensure that its recommended product or service is appropriate to that consumer. The extent of information the commercial bank gathers should: (a) be appropriate to the nature and complexity of the product or service being proposed to, or sought by, the consumer; and (b) enable the bank to provide a professional service to the consumer.</p>
<b>Good Practice B. 2</b>	<p><b><i>Suitability</i></b></p> <p><b>Having regard to the facts disclosed by a consumer and other relevant facts about that consumer of which a bank is aware, the bank needs to ensure that:</b></p> <ul style="list-style-type: none"> <li><b>a. Any product or service it offers to that consumer is suitable for that consumer;</b></li> <li><b>b. In offering a selection of product or service options to that consumer, the product or service options contained in the selection represent only the most suitable from the bank’s range of products or services; and</b></li> <li><b>c. In recommending a product or service to that consumer, the recommended product or service is, in the reasonable view of the Bank, the most suitable product or service for that consumer.</b></li> </ul>
<b>Description</b>	<p>There is nothing in the existing law or in the Code of Ethics of the Banks’ Association that deals explicitly with this topic. As indicted above, by the terms of the Code of Conduct, banks are simply admonished to provide consumers with “accurate and useful information related to the characteristics of products or services offered and related to the terms, tariffs and decisions applied.”<sup>61</sup> Some banks do voluntarily seek, however, to ensure at least some elements of suitability.</p>
<b>Recommendation</b>	<p>Having regard to the facts disclosed by a consumer and other relevant facts about that consumer of which any commercial bank is aware, the bank needs to ensure that:</p> <ul style="list-style-type: none"> <li>a) any product or service it offers to that consumer is suitable for that consumer;</li> <li>b) in offering a selection of product or service options to that consumer, the product or service options contained in the selection represent only the most suitable from the bank’s range of products or services; and</li> <li>c) in recommending a product or service to that consumer, the recommended product</li> </ul>

<sup>61</sup> See Rule II a) 3 of the Code of Ethics.

	<p>or service is, in the reasonable view of the Bank, the most suitable product or service for that consumer.</p> <p>In particular, the law must ensure that a credit card is only issued to an identified customer who, after applying for it, has been recognized by its provider as a suitable consumer to receive it.</p> <p>Suitability rules must be enacted and enforced.</p>
<p><b>Good Practice B.3</b></p>	<p><b><i>Credit Agreements with Consumers</i></b></p> <p><b>Before a consumer enters into a credit agreement with a bank, the bank must:</b></p> <ul style="list-style-type: none"> <li><b>a. Ensure that its advertising, if any, in respect of such credit cautions the consumer against being an irresponsible borrower;</b></li> <li><b>b. Obtain independently verifiable evidence of the consumer’s assets and liabilities so as to ascertain whether the consumer has the financial capacity to repay the principal of the credit and all interest accruing thereon;</b></li> <li><b>c. Go over each term of the agreement with the consumer and establish to the bank’s reasonable satisfaction that the consumer understands and agrees with each of the terms of the agreement, including the certain, likely and possible future implications of each term;</b></li> <li><b>d. Explain to the consumer the requirements in respect of security to be provided by the consumer for the loan;</b></li> <li><b>e. Explain to the consumer the potential risks that may accrue to him or her in respect of future interest rate adjustments;</b></li> <li><b>f. Explain to the consumer the potential risks that may accrue to him or her in respect of possible future fluctuations in the rate of foreign exchange in the event the credit is denominated other than in local currency;</b></li> <li><b>g. Inform the consumer on the methods of computing interest rates to be paid by or charged to the consumer in accordance with the agreement, any relevant non-interest charges or fees related to the credit offered to the consumer, and any service charges to be paid by the consumer;</b></li> <li><b>h. Ensure that no term or condition of the agreement is misleading or manifestly unfair to the consumer;</b></li> <li><b>i. Disclose to the consumer the bank’s complaints procedures, as well as an outline of the action and remedies which the bank may take in the event of a default by the consumer;</b></li> <li><b>j. Ensure that the agreement is written in plain language and in a font size and spacing that facilitates the reading of every word; and</b></li> <li><b>k. Afford the consumer ample opportunity to read, reflect and comment upon each term of the agreement before the agreement is signed.</b></li> </ul>
<p><b>Description</b></p>	<p>The law dealing with consumer credit is contained in Chapters 11 and 16 of the Consumer Protection Act.</p> <p>There is no statutory or self-regulatory provision, however, that requires a bank to ensure that its advertising, if any, in respect of a consumer credit cautions the consumer against being an irresponsible borrower.</p> <p>Also, although banks routinely obtain independently verifiable evidence of its consumer’s assets and liabilities so as to ascertain whether the consumer has the financial capacity to repay the principal of the credit and all interest accruing thereon, there is nothing in the law or the Code of Ethics that requires this.</p> <p>Regarding a bank’s requirement to obtain verifiable evidence of a consumer’s financial capacity to repay a loan, the RS Banking Agency’s Decision on Minimum Standards for Recording Bank’s Loan Activities state that a consumer’s loan file must include “employment certification and salary or amount of income per year, if the applicant is an individual”, as well as “documents which need to be submitted for a check out and evaluation of debtor’s</p>

	<p>financial condition and its capability to repay the loan according to the agreed conditions with the analysis done, that is, authorized by bank's responsible officer which determines that debtor's cash flows are available for loan repayment"<sup>62</sup>. Similar provisions are in force in the FBiH.<sup>63</sup></p> <p>Also, the RS Banking Agency's Decision on Credit Risk Management and Asset Classification requires that banks' loan files contain documents showing, among other elements: "the beneficiary's financial state and ability to repay the funds, the dynamics and repayment sources"<sup>64</sup></p> <p>The Consumer Protection Act requires that, prior to the signing of a consumer credit agreement, a bank must provide its consumer in writing with the bank's requirements in respect of any security the consumer must supply to obtain the credit.<sup>65</sup></p> <p>Although the Consumer Protection Act requires, as well, that, prior to the signing of a consumer credit agreement, a bank must provide its consumer in writing with the annual interest rate for the credit and the terms and conditions of changes, if any, to that rate,<sup>66</sup> there is no legal or self-regulatory requirement for a bank to explain to its consumer the potential risks that may accrue to him or her in respect of any future interest rate adjustment.</p> <p>In addition, there is no legal or self-regulatory requirement for a bank to explain to its consumer the potential risks that may accrue to him or her in respect of possible future fluctuations in the rate of foreign exchange in the event the credit to that consumer is denominated other than in KMs.</p> <p>While the Consumer Protection Act requires a bank to provide its consumer the "terms and conditions of changes to the annual interest rate" in writing prior to the signing of a consumer credit agreement, banks now must also stipulate in their contracts on loans or deposits whether the nominal interest rate may change as an element of the effective interest rate. If this is the case, the bank "must clearly define conditions of such changes in the ... contract."<sup>67</sup> While this formulation begs the questions what constitutes "clearly defined conditions" and who decides, the consumer is, at least ideally, now informed of the method his or her bank will employ in computing adjustments in interest rates to be paid by, or charged to, the consumer in accordance with his or her credit agreement.</p> <p>It is in respect of changes made by certain BiH banks in their floating interest rates early in 2009 that the BiH banking community was accused of "loan sharking" by the media. Although rates in some instances rose, while at the same time as the EURIBOR was falling, the BiH banking industry was then, and remains, highly competitive. Present average interest rates, of 8% to 10 % on consumer loans, are some 10% lower than they were a decade ago and these rates are highly favorable to the BiH consumer when compared to rates prevailing in other countries in the Region. That said, more or less standard prevailing practice in at least some BiH banks was to insert a clause in their loan agreements, whether with consumers or legal entities, that allowed the bank to adjust its rates whenever the bank deemed it appropriate on the basis either of: (a) EURIBOR, without indicating anything more; or (b) the decision of the bank's senior management or owners.</p> <p>Complaints were first brought in the Federation, however, to the effect that these sorts of</p>
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<sup>62</sup> See Article 4 (6) and (7) of the Decision of the Managing Board of the RS Banking Agency on Minimum Standards for Recording Bank's Loan Activities of March 2003.

<sup>63</sup> See Article 3 (6) and (7) of the Decision of the Managing Board of the FBiH Banking Agency on Minimum Standards for Recording Bank's Loan Activities of December 2002.

<sup>64</sup> See Article 9 of the Decision of the Managing Board of the RS Banking Agency on Regulating Minimum Standards for Credit Risk Management and Banks Asset Classification of February 2003.

<sup>65</sup> See Article 54 (2) a) 8) of the Consumer Protection Act.

<sup>66</sup> See Article 54 (2) a) 5) and 6) of the Consumer Protection Act. See also, Article 58 (2) b) and c).

<sup>67</sup> See Decision of the Management Board of the FBiH Banking Agency on Amendments to Decision on Uniform Method of the Effective Interest Rate, dated 24 June 2009.



terms in loan agreements between certain banks and their corporate clients did not meet the test of "equality of the parties" as required by Article 11 of the Law on Obligations. It was also alleged that these clauses were unfair by creating significant imbalance between the rights and obligations of contracting parties to the detriment of the consumer. It was maintained, therefore, that violations of Articles 94 and 95 of the Consumer Protection Act had taken place. Certain consumers then raised the same concerns regarding their credit agreements with the same banks. And as a result, inspections were carried out by the FBiH's Inspectorate. On the basis of its findings that the equality test had indeed not been met and banks had breached the Consumer Protection Act, fines were levied by the Inspectorate on the offending banks, as well as on those certain senior managers deemed to have been complicit in these matters. When the relevant banks and their officers refused in each instance to pay these fines, litigation ensued in various courts of the FBiH.<sup>68</sup> The results at first instance are awaited in most cases, but in every instance in which a court had rendered a judgment upholding the fines, the bank and its senior officers appealed the judgment. And so far there has been no rulings on these appeals.

In the FBiH, at least, the threat has also been made by the FBiH's Inspectorate to seek a blanket court order compelling all banks that are ultimately found to have contravened the law to disgorge to their customers all interest earned "unjustifiably" over the life of their loans. Should such an action prove successful, the implications for the banking system and the entire BiH economy would obviously be dire.

Although there were far fewer complaints in RS about banks' more or less standard contractual provisions affording them power to change floating interest rates as indicated above, the complaints that arose in RS were inspected by the RS Inspectorate solely on the basis of non-compliance with the Consumer Protection Act. Again fines were imposed, banks refused to accept liability, litigation ensued and the results are awaited.

A fundamental issue raised by the banks at first instance and again on appeal is whether an Entity-level Inspectorate has legal capacity to carry out inspection in respect of a State-level statute. Concerns have also been raised by the banks about the attempt of Inspectorates to have the Consumer Protection Act apply to contracts entered into before that law was enacted.

In this context of media turmoil, in April 2009, the Consumer Ombudsman issued 16 Guidelines for banks<sup>69</sup>. In addition, the Banking Agencies have more recently required banks in their floating rate loan agreements to "define clearly the terms" of the interest rate adjustment. Better guidance is needed, however, from the Banking Agencies on this matter.

In addition, in their contracts for loans or deposits, the Consumer Protection Act requires prior disclosure by banks to consumers of the "total cost of credit", which includes "all charges, interest and other expenses to be paid."<sup>70</sup>

The Consumer Protection Act requires all terms in consumer contracts to be clear<sup>71</sup> and it forbids banks to employ contractual provisions that are unfair or could be harmful for the consumer.<sup>72</sup> A contractual provision that has not been "individually negotiated" will be considered unfair, provided it creates a "significant imbalance" between the rights and obligations of the contracting parties to the detriment of the consumer or it is contrary to the three "principles of honesty, conscientiousness and good business practices".<sup>73</sup> What constitutes "significant", as well as "good business practices" in these respects, depends,

<sup>68</sup> As of September 2009, Sarajevo's Municipal Court had fined four banks for violation of consumer rights in the first instance, based on the FBiH Inspectorate's reports. The fines ranged from KM 2,500 to KM 20,000 per institution. An executive director was also fined KM 1,000.

<sup>69</sup> See Guidelines and Recommendations in the Sector of Consumer Loans, issued by the Institution of the Ombudsman for Consumer Protection in BiH on April 28, 2009.

<sup>70</sup> See Article 55 (1), as well as Article 56 (1) which defines "annual rate of credit costs."

<sup>71</sup> See Article 93 (2).

<sup>72</sup> See Article 94 (1). By Article 94 (2), any contractual provision that is unfair is "null and void".

<sup>73</sup> See paragraphs a) and c) of Article 95. The terms "conscientiousness" and "good business practices" are undefined.

	<p>however, on the facts and is subject to interpretation.</p> <p>There is no legal or self-regulatory requirement for a bank to disclose to a consumer the bank's complaints procedures, as well as an outline of the action and remedies which the bank may take in the event of a default by the consumer.</p> <p>Nor is there any legal or self-regulatory requirement that a consumer credit agreement be written in plain language and in a font size and spacing that facilitates the reading of every word.</p> <p>And finally, there is, again, nothing in either the Consumer Protection Act or the Code of Ethics that requires a bank to afford its consumer any, let alone "ample", opportunity to read, reflect and comment upon each term of his or her credit agreement before the agreement is signed.</p>
<b>Recommendation</b>	<p>Consideration should be given to amending the law so as to require that, prior to having a consumer enter into a consumer credit agreement with it, a bank must:</p> <ul style="list-style-type: none"> <li>a) ensure that its advertising, if any, in respect of the credit cautions the consumer against being an irresponsible borrower;</li> <li>b) obtain independently verifiable evidence of its consumer's assets and liabilities in order to ascertain whether the consumer has the financial capacity to repay the principal of the credit and all interest accruing thereon;</li> <li>c) go over each term of the agreement with the consumer so as to establish to the bank's reasonable satisfaction that the consumer understands and agrees with each term of the agreement, including the certain, likely and possible future implications of each term;</li> <li>d) explain to the consumer the potential risks that may accrue to him or her in respect of future interest rate adjustments, if any;</li> <li>e) explain to the consumer the potential risks that may accrue to him or her in respect of possible future fluctuations in the rate of foreign exchange in the event the credit is denominated other than in KMs;</li> <li>f) set forth why, when and on what basis, a floating interest rate may adjust, ideally with reference to an objective and widely-publicized reference point and with a stated cap for each adjustment (either upward or downward), as well as a stated total cap (upward or downward) over the entire term of the credit;</li> <li>g) disclose to the consumer the bank's complaints procedures, as well as an outline of the action and remedies which the bank may take in the event of a default by the consumer;</li> <li>h) ensure that the agreement be written in plain language and in a font size and spacing that facilitates the reading of every word; and</li> <li>i) afford its consumer ample opportunity to read, reflect and comment upon each term of the agreement.</li> </ul> <p>Given the extent of public concern still surrounding the questions of how, when and why floating interest rates should legitimately be adjusted, it is suggested that the Central Bank, in technical discussions with all stakeholders, look to these issues as a matter of some urgency so that better guidance can be forthcoming from both Banking Agencies as soon as possible. For purposes of discussion, a proposal is suggested in the Annex.</p>
<b>Good Practice B. 4</b>	<p><b><i>Cooling-off Period</i></b></p> <p><b>Unless explicitly waived in advance by a consumer in writing, a bank should provide the consumer a "cooling-off" period of at least seven, but preferably fourteen, days immediately following the signing of any loan agreement between the bank and the consumer during which time the consumer may, on written notice to the bank and the return of all monies received, treat the agreement as null and void without penalty to the consumer of any kind.</b></p>
<b>Description</b>	<p>The basic rules of contract in these respects are contained in the BiH Law of Obligations</p>

	<p>which, among other things, provides as follows:</p> <ul style="list-style-type: none"> <li>• A contract that has been legally entered into imposes on a contracting party a duty to perform what has been promised, and neither the exceptional difficulty of the transaction, nor difficulties in performance arising later, gives the right to one party to withdraw from the contract, even if the other party is compensated for losses;</li> <li>• One party may not withdraw from a contract without the consent of the other party, even if the other party fails to perform and the effort to withdraw is due to that failure;</li> <li>• Unilateral withdrawal from a contract is permitted only when it is based on the nature of the contract, or when the law provides for it in certain circumstances, or when such right has been expressly provided for by contract; and</li> <li>• Each party has the right to claim for performance of the contract by the other party.</li> </ul> <p>As far as “distance contracts” are concerned, the Consumer Protection Act entitles a consumer to withdraw unilaterally on providing written notice to the bank within 15 working days.<sup>74</sup> Doing so entails no penalty or cost to the consumer or any explanation on his or her part.<sup>75</sup> And time runs from the date of the contract.</p> <p>Before a distance contract can be entered into, a bank must provide the consumer with information, including his or her right of withdrawal, as well as “the competent court and applicable law in the case of disputes”.<sup>76</sup> However, it is not clear on what basis a bank is competent to name the competent court, as well as the applicable law.</p> <p>Although there is nothing in the Code of Ethics of the Banks’ Association on this matter, in at least some banks the practice has been to allow consumers to treat credit contracts as terminated provided the consumer first returns all funds borrowed and pays an “administrative” fee for doing so. There are apparently, however, no consistent or transparent rules regarding the application of such fees or the basis on which they are calculated, whether in generally applicable terms and conditions of banks or in the specific wording of individual consumer loan agreements.</p> <p>To counteract this situation, the Banking Agencies have recently required banks to restrict the maximum penalty they charge their customers on withdrawing from a credit contact to the same percentage “amount applied in the loan processing”<sup>77</sup>.</p>
<b>Recommendation</b>	Consideration should be given to amending the law to apply the distance contract provisions on cooling-off periods to all loans to consumers.
<b>Good Practice B. 5</b>	<p><b><i>Linked Products and Bundling Clauses</i></b></p> <p><b>Whenever a borrower is obliged by a bank to purchase any product, including an insurance policy, as a pre-condition for receiving a loan from the bank, the borrower should be free to choose the provider of the product.</b></p>
<b>Description</b>	There is nothing in State- or Entity-level law or in the Code of Ethics of the Banks’ Association that deals explicitly with this matter.
<b>Recommendations</b>	<p>Bundling of a product or service by a bank with a second product or service that is provided by an entity that is affiliated in any way with the bank should only be permissible by law if the consumer: (1) receives prior transparent notice in writing of the bundling and clear statements regarding: (a) its implications in terms of cost to the consumer; and (b) the nature of the bundling and what precisely is and is not covered as a result; and (2) then agrees in writing with the bank to waive his or her right to proceed with unbundled products.</p> <p>Consideration should also be given to amending the law so as to require full disclosure in</p>

<sup>74</sup> See Article 47 (1) of the Consumer Protection Act

<sup>75</sup> Ibid.

<sup>76</sup> See Article 44 (1) i) and l).

<sup>77</sup> See, for example, Article 2 of the Decision of the FBiH Banking Agency dated 24 June 2009.

	the event that any accompanying service is offered to the consumer in the context of a consumer credit.
<b>Good Practice B. 6</b>	<p><b><i>Preservation of Rights</i></b></p> <p><b>Except where permitted by applicable legislation, in any communication or agreement with a consumer, a bank should not exclude or restrict, or seek to exclude or restrict:</b></p> <ul style="list-style-type: none"> <li><b>a. Any statutory liability or duty of care of the bank to the consumer;</b></li> <li><b>b. Any duty to act with skill, care and diligence toward the consumer in connection with the provision by the bank of any banking service or product; or</b></li> <li><b>c. Any liability arising from the bank's failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of any banking service or product to the consumer.</b></li> </ul>
<b>Description</b>	<p>The statutory duty of a bank to act with skill and care toward its consumers is contained in the Law on Obligations. By its terms, "a party to a bond relation (i.e. a contract) is obliged to act with care which is expected in the corresponding type of obligations, in legal transactions (good businessman's care or good host's care)." <sup>78</sup> Banks are therefore required to apply good banker's care. "When fulfilling an obligation related to its professional activity (e.g. banking) [, however,] a party to a bond relation (in this case a bank) is obliged to act with greater care and in accordance with rules of its profession and with (relevant) business practices (good expert's care)." Query, however, whether the Code of Ethics of the Banks' Association constitutes any evidence of banking business practices. There is apparently no case in BiH of any bank either excluding or restricting or seeking to exclude or restrict the application of these provisions and, thus, items a. and b, above are being complied with.</p> <p>The liability, if any, that arises from a bank's failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of any banking service or product to a consumer, arises from the agreement between the bank and the consumer. And this agreement can, in fact, restrict potential responsibility of the bank for damages based on the breach of any contractual obligation of the bank, provided the breach resulted from simple negligence. If the bank acted, however, either with intent or gross negligence, then any agreed exclusion of liability would not apply and the impact in law would sound essentially in what would likely prove to be an increased amount of compensation to the consumer by way of damages.</p>
<b>Recommendation</b>	By the terms of the revised, fully endorsed and widely-publicized Banks' Association's Code of Ethics, in any communication or agreement with a consumer, a bank should be prevented from excluding or restricting, or from seeking to exclude or restrict, any liability arising from the bank's failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of any banking service or product to the consumer.
<b>Good Practice B. 7</b>	<p><b><i>Regulatory Status Disclosure</i></b></p> <p><b>In all of its advertising, whether by print, television, radio or otherwise, a bank should disclose: (a) that it is regulated; and (b) the name and address of the regulator.</b></p>
<b>Description</b>	The Law on Banks of the FBiH simply requires, as a general rule, that "no one ... use the word "bank" or derivatives of the word "bank" in respect of a business, product or service without a banking or authorization issued by the [Banking] Agency ... ". <sup>79</sup> A similar provision exists in the Law on Banks of the RS. In neither instance, however, is there any mention of a requirement to disclose that the company is regulated and by whom. Nor is there any provision in this respect in the Banks' Association's Code of Ethics.
<b>Recommendation</b>	The law should be amended to require any BiH bank to disclose in any advertising: (a) that it is regulated by one or both Banking Agencies; and (b) the name and address of the relevant Banking Agency or Agencies. Or, at the very least, this requirement should be included in any new or revised banking industry Code of Ethics.

<sup>78</sup> See Law of Obligations, Article 18

<sup>79</sup> See the FBiH Law on Banks, Article 2, paragraph 3

<p><b>Good Practice B. 8</b></p>	<p><b><i>Terms and Conditions</i></b></p> <p><b>Before a consumer may open a deposit, current or loan account at a bank, the bank must provide the consumer with a written copy of its general terms and conditions, as well as all terms and conditions that apply to the account to be opened. Collectively, these Terms and Conditions must:</b></p> <ul style="list-style-type: none"> <li><b>a. Disclose details of the bank’s general charges, the bank’s complaints procedures, information about any compensation scheme that the bank is a member of, and an outline of the action and remedies which the bank may take in the event of a default by the consumer;</b></li> <li><b>b. Include information on the methods of computing interest rates paid by or charged to the consumer, any relevant non-interest charges or fees related to the product offered to the consumer, any service charges to be paid by the consumer, restrictions, if any, on account transfers by the consumer and the procedures for closing an account;</b></li> <li><b>c. Set forth clear rules regarding: (i) the reporting of unauthorized transactions; (ii) stolen cards; and (iii) liability; and</b></li> <li><b>d. Be written in plain language and in a font size and spacing that facilitates the reading of every word.</b></li> </ul>
<p><b>Description</b></p>	<p>By the FBiH’s Law on Banks, each bank is obliged “regularly [to] notify its customers of the terms and conditions associated with the deposits made and the credits received by them, including the annual interest rate.<sup>80</sup> A similar provision exists in the RS Law on Banks.<sup>81</sup> Apart from these very general provisions, however, there is no legal requirement for a BiH bank to provide a consumer with a <i>written</i> copy of its general terms and conditions before the consumer opens any type of account at a bank. In addition, a BiH bank that is a member of the State’s deposit insurance program is also under no obligation<sup>82</sup> to provide information at any time to a consumer regarding the guaranteed compensation amount and its potential payment procedures in respect of his or her eligible deposits.</p> <p>The Consumer Protection Act does require, however, that prior to entering a consumer contract, the consumer must receive information in writing about the terms and conditions of that contract.<sup>83</sup> And, for credit agreements generally, this information must include: a) net amount of credit; b) the total cost of credit; c) the terms and conditions for early credit repayment, d) the terms and conditions for the termination of the contract, including in case of default by the consumer; e) the annual interest rate for credit in annual terms; f) the terms and conditions of changes to the annual interest rate; g) insurance costs for the outstanding debt or any other insurance concluded further to the credit agreements; and h) the securities to be given.<sup>84</sup></p> <p>The Banks’ Association’s Code of Ethics only mentions that a bank shall “provide any consumer accurate and useful information related to the characteristics of products or services on offer, as well as to the terms, tariffs and decisions applied”. The Code also requires banks to “ensure that there are no vague terms in its business policy documents, application forms and access contracts, which would impose undefined commitments on consumers, thereby bringing uncertainty to the consumer regarding his or her rights and obligations”.</p> <p>The regime for contractual terms and commercial practices that are unfair to the consumer is, however, provided in the Consumer Protection Act.</p>
<p><b>Recommendation</b></p>	<p>Consideration should be given to requiring by statute that, before a consumer opens a deposit, current or loan account at any bank, the bank must provide the consumer with a written copy of its general terms and conditions, as well as all terms and conditions that</p>

<sup>80</sup> See Article 45 of the FBiH Law on Banks.

<sup>81</sup> See Article 98 of the RS Law on Banks.

<sup>82</sup> See the State’s Law on Deposit Insurance.

<sup>83</sup> Article 54 (1) of the Consumer Protection Act

<sup>84</sup> Ibid., Article 54 (2) a)

	<p>apply to the account to be opened. These Terms and Conditions should then:</p> <ul style="list-style-type: none"> <li>i) disclose details of the bank’s general charges, the bank’s complaints procedures, information about any compensation scheme that the bank is a member of, and an outline of the action and remedies which the bank may take in the event of a default by the consumer;</li> <li>ii) include information on the methods of computing interest rates paid by or charged to the consumer, any relevant non-interest charges or fees related to the product offered to the consumer, any service charges to be paid by the consumer, restrictions, if any, on account transfers by the consumer and the procedures for closing an account;</li> <li>iii) set forth clear rules regarding: (a) the reporting of unauthorized transactions; (b) stolen credit and debit cards; and (c) liability; and</li> <li>iv) be written in plain language and in a font size and spacing that facilitates the reading of every word.</li> </ul> <p>In this respect, the provisions of the EU Directive 2008/48/EC of 23 April 2008 are relevant.</p> <p>A further area which is becoming common practice in many European countries is to provide the consumer with some stress tests of the products they are purchasing. This is largely applicable to mortgage loans which may be subject to wide variations in cost due to variable interest rates or currency movements.</p> <p>It is suggested that the Banks’ Association produce a standard set of easily understandable scenarios which should be given to consumers --<i>prior</i> to signing any credit agreement with a variable interest rate or denominated in a currency other than KMs. These scenarios could include the impact of increasing the interest rate by 2 or 3 per cent, or the impact of a change in the value of the KM relative to the currency of the credit. This information could also form part of the Key Facts documentation detailed below.</p>
<b>Good Practice B. 9</b>	<p><b><i>Key Facts Statement</i></b></p> <ul style="list-style-type: none"> <li><b>a. A bank should have a single-page Key Facts Statement, written in plain language, in respect of each of its accounts, types of loans or other products.</b></li> <li><b>b. Prior to a consumer opening any account at, or signing any loan agreement with, the bank, the consumer should have delivered a signed statement to the bank to the effect that he or she has duly received a copy of the relevant document from the bank.</b></li> </ul>
<b>Description</b>	<p>Neither the law requires a bank to produce such a document, nor does the Banks’ Association’s Code of Ethics recommend this practice. Although most banks do produce small, folded glossy pamphlets regarding at least each of their major consumer products and services, these in no way substitute for Key Facts Statements which invariably help consumers in comparison shopping with and between banks, thereby permitting consumers to choose products and services wisely that meet their requirements on terms they can properly accept.</p> <p>That said, the kernel of the idea is contained in the Banks’ Association’s Code of Ethics. By Article II A) 3, “Banks shall provide to customers accurate and useful information related to the characteristics of products and services offered, and related to the terms, tariffs and decisions applied.” However, no BiH bank appears to use Key Facts Statements, as such, for any of their accounts or loan products.</p>
<b>Recommendation</b>	<p>The law should be amended to require banks to provide the consumer with a Key Facts Statement for each product or service offered. And, prior to a consumer opening any account at, or signing any loan agreement with, a bank, the consumer should have delivered a signed statement to the bank to the effect that he or she has duly received a copy of the relevant Key Facts Statement from the bank.</p>

<p><b>Good Practice B.10</b></p>	<p><b><i>Guarantees</i></b></p> <p><b>No advertisement by a bank should describe either an actual or future deposit or interest rate payable on a deposit as being guaranteed or partially guaranteed unless:</b></p> <ul style="list-style-type: none"> <li><b>a. There is a legally enforceable agreement between the bank and a third party who or which has provided such a guarantee; and</b></li> <li><b>b. The advertisement states:</b> <ul style="list-style-type: none"> <li><b>(i) the extent of the guarantee;</b></li> <li><b>(ii) the name and address of the party providing the guarantee; and</b></li> <li><b>(iii) in the event that that party is in any way connected to the bank, the precise nature of that connection.</b></li> </ul> </li> </ul>
<p><b>Description</b></p>	<p>By the terms of the Law on Obligations:</p> <ul style="list-style-type: none"> <li>a) A contract promising that a third person will perform something binds neither the promisor nor the third person, unless: <ul style="list-style-type: none"> <li>1) someone undertakes the obligations of another person's debt;</li> <li>2) someone promises to procure a guarantor for oneself;</li> <li>3) a person's manager makes a promise and asserts that this third person shall confirm it; or</li> <li>4) a promise has been made securing performance with contractual penalties or by undertaking to compensate for any loss.</li> </ul> <p>In all such cases, contractual penalties or compensation for losses shall be paid if the promise is not kept; and</p> </li> <li>b) If someone makes a promise either to ensure that a third person performs something, or to induce him or her to perform it, then it shall be an action of the promisor himself or herself, and therefore, the promisor shall compensate for losses if the third person does not undertake to perform such action.</li> </ul> <p>Regardless of any underlying substantive law, however, besides the existing deposit insurance regime (which is based upon legally enforceable statutory obligations),<sup>85</sup> there is nothing in either Entity's Law on Banks, the Law on Obligations or apparently any other Law or regulation that deals in any way with advertisements of guarantees of a bank deposit or of guarantees of an interest rate payable on a bank deposit. And there is, likewise, nothing in the Banks' Association' Code of Ethics that touches on this subject.</p>
<p><b>Recommendation</b></p>	<p>The law should require that no advertisement by a BiH bank may be made that describes either an actual or future deposit or interest rate payable on a deposit as being guaranteed or partially guaranteed unless:</p> <ul style="list-style-type: none"> <li>a. there is a legally enforceable agreement between the bank and a third party who or which has provided the guarantee; and</li> <li>b. the advertisement states: <ul style="list-style-type: none"> <li>(i) the extent of the guarantee;</li> <li>(ii) the name and address of the party providing the guarantee; and</li> <li>(iii) in the event that that party is in any way connected to the bank, the precise nature of that connection.</li> </ul> </li> </ul>
<p><b>Good Practice B.11</b></p>	<p><b><i>Professional Competence</i></b></p> <ul style="list-style-type: none"> <li><b>a. In order to avoid any misrepresentation of fact to a consumer, any bank staff member who deals directly with consumers, or who prepares bank advertisements or who markets any service or product of the bank should be familiar with all legislative, regulatory and code of conduct guidance requirements relevant to his or her work, as well as with the details of any product or service of the bank which he or she sells or promotes.</b></li> <li><b>b. Regulators and industry associations should collaborate to establish and administer minimum competency requirements for any bank staff member who:</b></li> </ul>

<sup>85</sup> See Good Practice F. 1 below.

	<p><b>(i) deals directly with consumers;</b>  <b>(ii) prepares any Key Facts Statement or any advertisement for the bank;</b>  <b>or</b>  <b>(iii) markets the bank’s services and products.</b></p>
<b>Description</b>	<p>Some banks, and apparently all that are foreign-owned, take it upon themselves to ensure that their staff members (at least those under categories b (i) and (iii) above) receive what they consider to be “adequate” in-house training before staff embark on client-oriented functions. But, from the perspective of what would be best for the BiH banking industry and for consumers as a whole, unfortunately no generally agreed industry standard exists in these respects.</p> <p>The Banks’ Association’s Code of Ethics states that banks “shall enable their staff to be aware of products and services offered by the bank ....”<sup>86</sup> Also, banks are required to see that “their staff will be trained to comply strictly with the rules about banking secrecy, and, in general act with full discretion in contact with customers”.<sup>87</sup></p> <p>No industry-wide minimum competency requirements have yet been established, however, for any bank staff member who deals directly with consumers, prepares any Key Facts Statement, drafts any advertisement for the bank or markets the bank’s services and products.</p>
<b>Recommendation</b>	<p>The Banks’ Association, possibly with the collaboration of the Banking Agencies, should establish and administer minimum competency requirements at the very least for any staff member of a bank who:</p> <ul style="list-style-type: none"> <li>• deals directly with consumers;</li> <li>• prepares any Key Facts Statement or any advertisement for the bank; or</li> <li>• markets the bank’s services and products.</li> </ul>
<b>SECTION C</b>	<b>CUSTOMER ACCOUNT HANDLING AND MAINTENANCE</b>
<b>Good Practice C.1</b>	<p><b><i>Statements</i></b></p> <p><b>a. Unless a bank receives a customer’s prior signed authorization to the contrary, the bank should issue, and provide the customer with, a monthly statement regarding every account the bank operates for the customer. Each such statement should:</b></p> <p><b>(i) set out all transactions concerning the account during the period covered by the statement; and</b></p> <p><b>(ii) provide details of the interest rate(s) applied to the account during the period covered by the statement.</b></p> <p><b>b. Each credit card statement must set out the minimum payment required and the total interest cost that will accrue, if the cardholder makes only the required minimum payment.</b></p> <p><b>c. Each mortgage or other loan account statement must clearly indicate the amount paid during the period covered by the statement, the total outstanding amount still owing, the allocation of payment to the principal and interest and, if applicable, the up-to-date accrual of taxes paid.</b></p> <p><b>d. A bank must notify a customer of inactivity of any account of the customer and provide a reasonable final notice in writing to the customer if the funds are to be transferred to the government.</b></p> <p><b>e. When an investor signs up for paperless statements, such statements should be in an easy-to-read and readily understandable format.</b></p>

<sup>86</sup> See Code of Ethics, II A) 1.

<sup>87</sup> Ibid, II A) 4.



<b>Description</b>	<p>The Payment Transaction Law of each Entity requires a bank to provide its customer, at a minimum, with a monthly account statement (for all types of accounts except “passbook accounts”), identifying each credit and debit posted to the account since the last statement and providing for the final balance. For a passbook account, a bank must facilitate the ongoing update of the passbook upon its presentation by the customer, and in each update, each credit or debit that is posted to the account since the previous update must be recorded, as well as the final account balance. The Law also obliges banks to “investigate any discrepancy or contested credit or debit, and where the facts are agreed or determined, make all necessary adjustments and corrections.”<sup>88</sup></p> <p>The FBiH Law on Banks requires a bank to publish a notice listing all dormant deposit accounts in at least three daily newspapers published in the FBiH Entity and at least one in RS and one in the District every six months. After a dormant deposit account has been published at least twice by the bank, the account and all its records are transferred to the Ministry of Finance. Afterwards, the accountholder may submit proof of ownership of the account funds to the Ministry, which then reviews the evidence and, if the proof is satisfactory, returns the money to the accountholder. According to the RS Law on Banks, banks are not bound to publish the lists of dormant accounts, but to prescribe the procedures for treatment of dormant accounts.<sup>89</sup></p>
<b>Recommendation</b>	<p>The regulations need to be expanded to cover all aspects referred to above and then effectively enforced.</p>
<b>Good Practice C. 2</b>	<p><b><i>Notification of Changes in Interest Rates and Non-interest Charges</i></b>  <b>A customer of a bank must be notified in writing by the bank of any change in:</b></p> <ul style="list-style-type: none"> <li><b>a. The interest rate to be paid or charged on any account of the customer, as soon as practicably possible; and</b></li> <li><b>b. A non-interest charge on any account of the customer, a reasonable period in advance of the effective date of the change.</b></li> </ul>
<b>Description</b>	<p>By the terms of Article 58 of the Consumer Protection Act, the consumer should be informed in writing of “each change of annual interest rates and other charges eight days in advance, or exceptionally at the moment of such changes, if this period is less than eight days, as well as at the moment of debiting the consumer’s current account.”</p> <p>In respect of changes in conditions of loans, the FBiH Banking Agency’s Decision on Minimum Standards for Recording Bank’s Loan Activities states that a bank can make changes to the conditions of the loan only in written form and by adequate amendments and annexes to the agreement<sup>90</sup>.</p> <p>In case of variable interest rate loans, there is no benchmark or base interest rate that would serve as guidance for consumers to know how the interest rate may change in the future. After some banks increased their variable interest rates at a time when the EURIBOR was decreasing in early 2009, the Banking Agencies issued regulations requiring more clarity in the conditions for changes of interest rates. For example, the FBiH Decision on Amendments to Decision on Uniform Method of Effective Interest Rate Accrual and Reporting on Loans and Deposits established in Article 1 that banks and microcredit organizations “must clearly define conditions” of changes in interest rates of loan or deposit contracts, where these contracts stipulate a possibility of nominal interest changes as an element of the effective interest rate. However, there is no further specification of what constitutes “clearly defined conditions”. Article 1 of the FBiH Decision also obliges banks and microcredit organizations to “inform customers in written form of the changes ... at latest within 30 days”.</p>

<sup>88</sup> See Article 32 of the Payment Transaction Law of both the FBiH and the RS, approved in 2000.

<sup>89</sup> Article 45 a) of the FBiH Law on Banks and Article 99 of the RS Law on Banks.

<sup>90</sup> See Article 1 of the Decision of the Managing Board of the FBiH Banking Agency on Minimum Standards for Recording Bank’s Loan Activities of December 2002, and Article 2 of the Decision of the Managing Board of the RS Banking Agency on Minimum Standards for Recording Bank’s Loan Activities of March 2003.

	<p>The Payment Transaction Laws of FBiH and RS establishes that a bank will not unilaterally modify the terms of a bank account agreement unless the customer is so advised at least 30 days before the change comes into effect, and that a modification in breach of this provision is ineffective.<sup>91</sup></p>
<p><b>Recommendation</b></p>	<p>Given the extent of public concern surrounding the mechanisms for adjusting variable interest rates, it is suggested that the Central Bank, in technical discussions with all relevant stakeholders, look to these issues as a matter of urgency so that better guidance can be forthcoming from both Banking Agencies as soon as possible. The Annex to this Volume II provides suggested language for discussion purposes.</p>
<p><b>Good Practice C. 3</b></p>	<p><b><i>Customer Records</i></b></p> <p><b>A bank should maintain up-to-date records in respect of each customer of the bank that contain the following:</b></p> <ul style="list-style-type: none"> <li><b>a. A copy of all documents required to identify the customer and provide the customer’s profile;</b></li> <li><b>b. The customer’s address, telephone number and all other customer contact details;</b></li> <li><b>c. Any information or document in connection with the customer that has been prepared in compliance with any statute, regulation or code;</b></li> <li><b>d. Details of all products and services provided by the bank to the customer;</b></li> <li><b>e. A copy of all correspondence from the customer to the bank and vice-versa and details of any other information provided to the customer in relation to any product or service offered or provided to the customer;</b></li> <li><b>f. All documents and applications of the bank completed, signed and submitted to the bank by the customer;</b></li> <li><b>g. A copy of all original documents submitted by the customer in support of an application by the customer for the provision by the bank of a service or product; and</b></li> <li><b>h. Any other relevant information concerning the customer.</b></li> </ul> <p><b>A law or regulation should provide the minimum permissible period for retaining all such records and, throughout this period, the customer should be provided ready free access to all such records.</b></p>
<p><b>Description</b></p>	<p>Article 44 of the FBiH’s Law on Banks states that “Banks shall keep on file the pertinent documents for each one of their transactions, in accordance with law.”</p> <p>In respect of loans, each Banking Agency has issued a Decision on Minimum Standards for Recording Bank’s Loan Activities, which stipulates that each loan file must contain all records related to the loan approved, and indicates the minimum information that the loan file shall have<sup>92</sup>, including among others:</p> <ul style="list-style-type: none"> <li>• request for the loan signed by the applicant, stating purpose for which the loan will be used;</li> <li>• original loan agreement;</li> <li>• employment certification and salary or amount of income per year, if the applicant is an individual;</li> <li>• documents which need to be submitted so as to confirm and evaluate the debtor’s financial condition and the debtor’s capacity to repay the loan according to the agreed conditions;</li> <li>• decision on loan approval issued by the bank’s authorized body, and containing maturity date, interest and other conditions under which the loan has been approved;</li> <li>• records proving the purpose of the loan;</li> </ul>

<sup>91</sup> Article 34 of the Payment Transaction Laws of FBiH and RS.

<sup>92</sup> See Article 4 of the Decision of the Managing Board of the RS Banking Agency on Minimum Standards for Recording Bank’s Loan Activities of March 2003 and Article 3 of the Decision of the Managing Board of the FBiH Banking Agency on Minimum Standards for Recording Bank’s Loan Activities.

	<ul style="list-style-type: none"> <li>• documents showing collateral or guarantee related to the loan;</li> <li>• records with the cash amount for which the loan property has been insured with an insurance company;</li> <li>• a record of changes and additions to the loan agreement, if any, after the loan approval,</li> <li>• documentation confirming and defining any action as required;</li> <li>• all correspondence and documents showing contacts between the bank and debtor after the loan agreement was approved.</li> </ul> <p>The Decision also stipulates that the bank shall maintain the loan file as long as the loan is not repaid or liquidated in other manner.<sup>93</sup></p> <p>The legislation on prevention of money laundering and financing of terrorism sets up some requirements regarding banks' identification of customers. For example, the RS Banking Agency's Decision on Prevention of Money Laundering and Terrorism Financing requires banks to ask for "all necessary documentation in order to have a full and accurate identification of every new customer, as well as to determine the purpose and intended nature of the business relationship with the bank."<sup>94</sup> For individuals wanting to become bank customers, banks are required to ask for specific information and documents to determine the individual's identity (e.g. full name, permanent address, date and place of birth, official identity document showing a photograph of the person, and the name of the employer of the individual). The Decision also requires banks to develop a profile of their customers and to keep the documentation for all transactions performed by these customers and in relationship with these customers<sup>95</sup>. Finally, the Decision also requires banks to "prescribe standards for types of necessary documentation and time periods for maintaining such information, at a minimum in accordance with appropriate regulations for maintaining documentation."<sup>96</sup></p>
<b>Recommendation</b>	The law should be amended to require simple and consistent requirements, as indicated above, in respect of each customer for at least some years.
<b>Good Practice C. 4</b>	<p><b>Checks</b></p> <p><b>The regime regarding the issuance and clearing of checks must be based on clear statutory and regulatory rules that, among other things, set reasonable requirements for banks on the following issues:</b></p> <ul style="list-style-type: none"> <li><b>a. For any bank on which a check is drawn, when the account on which it is drawn has insufficient funds;</b></li> <li><b>b. For any bank at which a customer of that bank seeks to cash or deposit a check, which is subsequently found to be drawn on an account with insufficient funds;</b></li> <li><b>c. Informing the customer of the consequences of issuing a check without sufficient funds, at the time a customer opens a checking account;</b></li> <li><b>d. Regarding the crediting of a customer's account and its timing, when a check deposited by the customer clears; and</b></li> <li><b>e. In respect of capping charges on the issuance and clearance of checks.</b></li> </ul>
<b>Description</b>	There is no existing regime of checks in the BiH banking system. Rather, financial transactions occur in cash or by bank transfers made in person, written order or electronically.
<b>Recommendation</b>	No recommendation.

<sup>93</sup> See Article 3 of the RS Banking Agency Decision and Article 2 of FBiH Banking Agency Decision.

<sup>94</sup> See Article 9 of the Decision of the Managing Board of the RS Banking Agency on Decision on Prevention of Money Laundering and Terrorism Financing of February 2003.

<sup>95</sup> Idem, Article 11.

<sup>96</sup> Idem, Article 8.

<p><b>Good Practice C.5</b></p>	<p><b><i>Electronic Checks</i></b></p> <p>a. Customers should be provided with consistent, clear and timely information about electronic checks and the cost of using them, at all relevant stages in a consumer's decision-making, in easily accessible and understandable form.</p> <p>b. Customers should be informed:</p> <ul style="list-style-type: none"> <li>(i) how the use of a credit card check differs from the use of a credit card;</li> <li>(ii) of the interest rate that applies to the use of credit card check and whether this differs from the rate charged for a credit card purchase;</li> <li>(iii) when interest is charged and whether there is no interest free period;</li> <li>(iv) whether additional fees or charges apply and, if so, on what basis and the amount; and</li> <li>(v) whether a purchase using a credit card check benefits from the same protection as using a credit card.</li> </ul> <p>c. Credit card checks should not be sent to consumers without prior consent.</p> <p>d. Authorities should encourage efforts to enable end users to better understand the market for electronic checks, such as providing comparative price information and undertaking educational campaigns.</p> <p>e. There should be clear rules regarding procedures for error resolution.</p>
<p><b>Description</b></p>	<p>There is no existing regime of electronic checks in the BiH banking system.</p>
<p><b>Recommendation</b></p>	<p>No recommendation.</p>
<p><b>Good Practice C. 6</b></p>	<p><b><i>Electronic Fund Transfers and Remittances</i></b></p> <p>a. There should be clear rules on the rights, liabilities and responsibilities of the parties in electronic fund transfers.</p> <p>b. Banks should provide information on prices and service features of electronic fund transfers and remittances in easily accessible and understandable forms. As far as possible, this information should include:</p> <ul style="list-style-type: none"> <li>(i) the total price (e.g. fees at both ends, foreign exchange rates and other costs);</li> <li>(ii) the time it will take the funds to reach the receiver;</li> <li>(iii) the locations of the access points for sender and receiver;</li> <li>(iv) terms and conditions of the fund transfers services to the customer.</li> </ul> <p>c. To ensure full transparency, it should be clear to the sender if the price or other aspects of the service vary according to different circumstances, and the bank should disclose the information without imposing requirements on the consumer.</p> <p>d. There should be a legal provision requiring documentation of electronic fund transfers.</p> <p>e. There should be clear, publicly available and easily applicable procedures in cases of errors and frauds.</p> <p>f. Authorities should encourage efforts to enable end users to better understand the market for electronic fund transfers and remittances, such as providing comparative price information or undertaking educational campaigns.</p>
<p><b>Description</b></p>	<p>According to information provided by the World Bank, in 2007 BiH was among the top ten remittance countries in Europe and Asia in terms of value, and among the top five when considering remittances as a proportion of GDP. Remittances were approximately USD 19 billion, representing 17 per cent of GDP. However, these statistics only consider remittances made through official bank channels. It is estimated that remittances executed unofficially represent around 50 percent of those conducted officially.</p> <p>Despite the importance of remittances in the BiH economy, there is no law, regulation or</p>

	<p>guideline dealing with the particularities of electronic fund transfers or remittances. There is only a general legal framework covering payment transactions, including transactions made electronically. The law includes provisions on duties of a bank receiving a customer's order, as well as liability, damages and restitutions regarding the execution of a customer's payment order.</p>
<b>Recommendation</b>	<p>There should be specific legal or regulatory provisions or guidelines covering the elements included in this good practice.</p>
<b>Good Practice C. 7</b>	<p><b><i>Debt Recovery</i></b></p> <ul style="list-style-type: none"> <li><b>a. No bank, agent of a bank or third party should employ any abusive debt collection practice against any customer of the bank, including the use of any false statement, any unfair practice or the giving of false credit information to others.</b></li> <li><b>b. The type of debt that can be collected on behalf of a bank, the person who can collect any such debt and the manner in which that debt can be collected must be indicated to the customer of the bank when the credit agreement giving rise to the debt is entered into between the bank and the customer.</b></li> <li><b>c. No debt collector should contact any third party about a bank customer's debt without informing that party of: (i) the debt collector's right to do so; and (ii) the type of information that the debt collector is seeking.</b></li> </ul>
<b>Description</b>	<p>What few debt collection agencies apparently exist in BiH are unlicensed and operate without any regulatory oversight. As a result, concerns have been raised about the possibility of unscrupulous behavior being employed to harass bank customer debtors. Aware, however, of the negative impact such activity would have on their reputations, many banks handle debt-collection "in-house".</p> <p>Given their un-regulated status, it is not surprising that no official statistics are available from any BiH debt collection agency on any aspect of its activities.</p> <p>Debt relief at a reasonable cost is essential for any consumer unable to pay his or her debts as they come due over some reasonable period of time.</p>
<b>Recommendation</b>	<p>A Law on Debt Collection Operations would be helpful, provided it would require, among other things:</p> <ul style="list-style-type: none"> <li>a. the licensing and oversight of all properly registered collection agencies by an appropriate regulatory authority;</li> <li>b. the provision of services in accordance with stated parameters on the basis of generally acceptable fair and reasonable behavior; and</li> <li>c. the provision of statistics by each licensed agency to the regulatory authority on a regular basis for annual consolidation and wide-spread public dissemination.</li> </ul> <p>In addition, the law must grant all consumers and their banks the right to re-schedule debts.</p>
<b>SECTION D</b>	<b>PRIVACY AND DATA PROTECTION</b>
<b>Good Practice D. 1</b>	<p><b><i>Confidentiality and Security of Customers' Information</i></b></p> <p><b>Customers have a right to expect that their financial transactions are kept confidential. The law should require banks to ensure that they protect the confidentiality and security of personal data, against any anticipated threats or hazards to the security or integrity of such information, and against unauthorized access.</b></p>
<b>Description</b>	<p>The Law on the Protection of Personal Data (Article 11) requires that data controllers and data processors take care of data security and take all necessary measures against unauthorized or accidental access to personal data, their alteration, destruction or loss, unauthorized transfer and other forms of illegal data processing, and against misuse of personal data. The law also requires data controllers (and processors within the scope of their competences) to develop a data security plan specifying technical and organizational</p>

	<p>measures to ensure security of personal data. In 2009, the Council of Ministers issued a by-law prescribing the methodology of safekeeping and special measures of technical protection.</p> <p>According to Article 16 of the Law on the Protection of Personal Data, all persons who process, or are in contact with, personal data in the premises of a data controller or processor are required to maintain the confidentiality of such data. And the confidentiality and security obligations remain in force after termination of employment or of any specific task.</p> <p>The Law establishes sanctions for violation of security and confidentiality provisions, applicable to the data controller, as well as responsible persons and employees.</p> <p>In addition, the FBiH and RS Payment Transaction Laws state that a bank is "bound by confidentiality and may not disclose any information on the (bank) account to anyone other than the customer, except otherwise regulated by law or authorized by the customer".<sup>97</sup></p>
<b>Recommendation</b>	No recommendation.
<b>Good Practice D. 2</b>	<p><b><i>Sharing Customer's Information</i></b></p> <ul style="list-style-type: none"> <li><b>a. A bank should inform its customer in writing: (i) of any third-party dealing for which the bank must share information regarding any account of the customer, such as any legal enquiry by a credit bureau; and (ii) how it will use and share the customer's personal information.</b></li> <li><b>b. No bank shall sell or share account or personal information regarding a customer of the bank to or with any party not affiliated with the bank for the purpose of telemarketing or direct mail marketing.</b></li> <li><b>c. The law should allow a customer of a bank to stop or "opt out" of the sharing by the bank of certain information regarding the customer and, prior to any such sharing of information, every bank should be required to inform each of its customers in writing of his or her rights in this respect.</b></li> <li><b>d. The law should prohibit the disclosure of any information of a banking customer by third parties.</b></li> </ul>
<b>Description</b>	<p>Although the Law on the Protection of Personal Data does not specifically cover banking or financial activities, its provisions indirectly cover the main provisions stated in this good practice.</p> <p>The Law on the Protection of Personal Data (Article 5) states that data controllers may process personal data only with a written consent signed by the subject whose data will be processed (data subject). The consent must clearly mention the data for which the consent is granted, the name of the controller and the purpose, as well as the period of time for which the consent is granted. This consent must then be kept for the time the data may be processed.</p> <p>Article 17 of the same Law states that data controllers have to notify data subjects - and receive their written consent - before sharing their personal data with any third party. If the data subject does not provide such consent, the data may not be disclosed to the third party unless such disclosure is in the public interest. According to Article 5, a data subject may withdraw his or her consent at any time, unless otherwise explicitly agreed by the data subject and controller.</p> <p>Article 17 also states that the data controller may provide personal data to a third party based on a written request indicating the purpose and legal grounds for the use of the data, as well as the specific type of personal data requested. The data controller is prohibited from providing personal data to third parties who are not authorized to process or use the data according to the Law or in the event that the purpose for using the personal data requested is contrary to the principles of personal data processing established in Article 4 of</p>

<sup>97</sup> See Article 33 of the Payment Transaction Law of both the FBiH and the RS, approved in 2000.

	<p>the Law. Under this provision, a data user may not use personal data for telemarketing or direct mail marketing.</p> <p>The Law (Article 22) also mandates that, before collecting personal data, a controller shall notify the data subject as to: the purpose of data processing; the identity of the controller, authority or third party who will have access to the data; whether the forwarding of data is a legal obligation; the consequences to the data subject of refusing to provide personal data; the cases in which the data subject has the right to refuse to provide personal data; and the extent to which the personal data collection is voluntary; as well as the right to access and the right to correct personal data.</p> <p>The Law also states that the data controller shall keep separate records regarding any personal data provided as well as the purpose for which it was provided.</p> <p>There is no specific provision in the Law prohibiting disclosure of personal information by third parties.</p>
<b>Recommendation</b>	The Law on the Protection of Personal Data would benefit from some precision in order to cover all the provisions included in the good practice, such as: specifying that the notifications to (banking) customers shall be in writing, and prohibiting disclosure of personal information of a customer by third parties.
<b>Good Practice D. 3</b>	<p><b><i>Permitted Disclosures</i></b></p> <p><b>The law should:</b></p> <ul style="list-style-type: none"> <li><b>a. State specific rules and procedures concerning the release to any government authority of the records of any customer of a bank;</b></li> <li><b>b. State what the government authority may and may not do with any such records;</b></li> <li><b>c. State what exceptions, if any, apply to these rules and procedures; and</b></li> <li><b>d. Provide penalties for the bank and any government authority for any breach of these rules and procedures.</b></li> </ul>
<b>Description</b>	<p>The legislation does not cover specific rules and procedures concerning the release of personal information to government authorities or the permitted uses of personal information by the authorities.</p> <p>As a general guideline, the Law on the Protection of Personal Data requires all users of data (including government authorities) to submit a written request of personal data. The request must indicate the purpose and legal grounds for the use of the personal data and the type of personal data being requested. The data controller is then authorized by the Law to provide the requested personal data (after notifying the data subject and receiving the subject's written consent) to a third party, "if this is necessary for carrying out tasks within the competence specified by law or for exercising of lawful interests of the user."</p> <p>In addition, Section 329 of the Criminal Code deals with "Disclosure of Non-disclosable Information" as follows:</p> <p>"For a person who commits disclosure of non-disclosable information which is not an official secret, if commission thereof is by a State official who has been warned concerning the non-disclosability of the information or who, in accordance with the law, is liable for the storage of information, the applicable sentence is custodial arrest or community service, or a fine not exceeding twenty times the minimum monthly wage."</p>
<b>Recommendation</b>	There should be regulations specifically covering the provisions stated in this good practice.
<b>Good Practice D. 4</b>	<p><b><i>Credit Bureaus</i></b></p> <ul style="list-style-type: none"> <li><b>a. No credit bureau may begin or maintain operations without being licensed to do so by the appropriate government authority in accordance with the law.</b></li> <li><b>b. Every bank must ensure the accuracy and credibility of the information it shares with any licensed credit bureau.</b></li> </ul>

	<p><b>c. The law or regulations providing for oversight over credit bureaus should ensure that, amongst other things, the rules relating to consumer protection: (i) provide for the extent and timeliness of the updating of information regarding any bank customer; (ii) require that any bank customer's records be kept confidential, except as may be expressly permitted by law; (iii) provide clear rules and procedures regarding the retention period of any credit record; (iv) require that every bank customer be informed in writing of the retention period; (v) require that every bank customer has ready, free access to all of his or her credit reports and be provided with a copy of any or all of his or her reports on conditions that are transparent; and (vi) provide procedures for correcting any mistake on a customer's credit report.</b></p>
<p><b>Description</b></p>	<p>There is one private credit bureau (LRC) in BiH and one Central Credit Register operating as part of the Central Bank. However, there is no law on credit registers or credit bureaus. The main legal framework under which these institutions operate is the general Law on the Protection of Personal Data.</p> <p>There is no requirement for credit bureaus to be licensed as such by any government authority. Neither is there a requirement for a bank to ensure the accuracy and credibility of the information shared with a credit bureau or credit register. There is also no requirement for credit officers to check on the creditworthiness of potential debtors through either the credit registry or the credit bureau. In fact, this has not been common practice for credit institutions in BiH (in some cases leading to a problem of consumer over-indebtedness)</p> <p>The Law on the Protection of Personal Data sets out some basic consumer protection provisions related to this good practice. Article 25 obliges data controllers, on the basis of a person's written request, to provide data subjects with information on their personal data once per calendar year and free of charge. Otherwise, such information may be provided at any time for a reasonable fee not exceeding the cost incurred in providing the information. The same Article requires the data controller to provide the information in writing and in an intelligible form, and within 30 days from the submission of a request.</p> <p>Article 7 requires the data controller to check whether personal data are authentic and accurate. The data subject and any other person to whom data are transferred for processing purposes shall be informed of any corrigenda and deletion of the data. However, the Law does not specify the mechanisms and procedures for correction of personal data.</p> <p>In 2009, the Personal Data Protection Agency began to evaluate the compliance of institutions operating in the financial system with current legislation regarding personal data protection. The private credit bureau is also subject to monitoring by the Personal Data Protection Agency. This credit bureau currently operates as a private company on the basis of a shareholders' agreement but without any specific legal framework. The credit bureau has developed several mechanisms to protect the security and confidentiality of the personal information stored and accessed through its system.</p> <p>The private credit bureau is currently covering information not only from financial institutions, but also from public utilities and enterprises selling goods through credit. The credit bureau is planning to develop a credit scoring model which would be offered to its clients in 2010. Credit scoring models constitute an important tool for the assessment of creditworthiness of potential clients and the BiH banking sector would greatly benefit from the development of such a tool by the credit bureau.</p> <p>Although the private credit bureau initially developed a consumer awareness campaign regarding the system of credit reporting, these efforts have recently slowed down. And clearly, the benefits of accessing this credit bureau's database for purposes of assessing the creditworthiness of debtors are still to be fully understood. There are still some important banks that are not members of the private credit bureau, which does not contribute to the development of the credit reporting system in BiH and does not help to promote the good practice of checking the full credit history of any potential debtor.</p>



<p><b>Recommendation</b></p>	<p>There should be a specific legal framework that regulates the operation not only of the public credit registry, but also of the private credit bureaus in BiH. The legal framework should include the provisions stated in this good practice. The Personal Data Protection Agency should be in charge of licensing and monitoring the operation of the credit registry and credit bureaus.</p> <p>The Personal Data Protection Agency should publicize the results of its assessment of compliance of financial institutions with the legal framework on data protection in order to instill confidence in the market, at least in respect of those financial institutions that have adequate data protection systems. The Personal Data Protection Agency and the Central Bank should also provide their technical opinions on the development of credit scoring models by any private credit bureau.</p> <p>It would be useful to conduct awareness campaigns for consumers to understand the importance of keeping a good credit score. It would also be useful to organize workshops that explain the importance of private credit bureaus for financial market participants, and their role in promoting sound financial market development.</p>
<p><b>SECTION E</b></p>	<p><b>DISPUTE RESOLUTION MECHANISMS</b></p>
<p><b>Good Practice E. 1</b></p>	<p><b><i>Internal Complaints Procedure</i></b></p> <ul style="list-style-type: none"> <li><b>a. Every bank should have in place a written complaints procedure for the proper handling of any complaint from a customer, with a summary of this procedure forming part of the bank’s Terms and Conditions referred to in B. 7 above.</b></li> <li><b>b. Within a short period of time following the date a bank receives a complaint, it should: (i) acknowledge in writing to the customer/complainant the fact of its receipt of the complaint; and (ii) provide the complainant with the name of one or more individuals appointed by the bank to deal with complaint until either the complaint is resolved or cannot be processed further within the bank.</b></li> <li><b>c. The bank should provide the complainant with a regular written update on the progress of the investigation of the complaint at intervals of not more than 10 business days.</b></li> <li><b>d. Within a few business days of its completion of the investigation of the complaint, the bank should inform the customer/complainant in writing of the outcome of the investigation and, where applicable, explain the terms of any offer or settlement being made to the customer/complainant.</b></li> <li><b>e. When a bank receives a verbal complaint, it should offer the customer/complainant the opportunity to have the complaint treated by the bank as a written complaint in accordance with the above. A bank may not require, however, that a complaint be in writing.</b></li> <li><b>f. A bank should maintain an up-to-date record of all complaints it has received that are subject to the complaints procedure. For each complaint, this record should contain the details of the complainant, the nature of the complaint, a copy of the bank’s response(s), a copy of all other relevant correspondence or records, the action taken to resolve the complaint and whether resolution was achieved and, if so, on what basis. The bank should make these records available for review by the banking supervisor or regulator as and when requested.</b></li> </ul>
<p><b>Description</b></p>	<p>Although some of the larger banks in BiH are in the process of establishing consumer complaints divisions within their Retail Departments, unfortunately none of the good practices referred to above has been systematically adopted or applied by banks in BiH. The prevailing practice in BiH commercial banks has been to deal on an entirely <i>ad hoc</i> basis with any complaint a consumer raises with the bank within the branch office concerned.</p> <p>Also, it must be acknowledged that, without ready access to professional legal advice, the</p>

	<p>vast majority of BiH consumers have difficulty knowing their rights as consumers in respect of any banking product or service. And, without this knowledge, complaining that a law or his or her contract has been breached is neither simple nor obvious for the typical consumer.</p> <p>Although as indicated under A. 2 above, the Banks' Association's Code of Conduct is far from adequate for various reasons, it does provide that: "if a customer finds an error in the way the bank is operating, and informs the bank about that, the bank shall try to correct the error within reasonable period of time and without delay."<sup>98</sup> This, though, is all that exists regarding internal complaints procedures.</p> <p>Both the RS and the FBiH Banking Agency adopted decisions on dealing with consumer complaints<sup>99</sup>, which go some way in dealing with these matters, although more is needed. With some minor variations, these decisions require commercial banks to have in place a written complaints procedure for the proper handling of any complaint from a customer and designate at least one officer to be responsible for the enforcement of the procedures. There is, however, no obligation to provide the consumer with a summary of these procedures, nor must these procedures be in the bank's General Terms and Conditions forming part of any agreement with the customer. Also, there is no obligation to provide the consumer with the name and address of the individual who has been appointed by the bank to deal with the complaint until either the complaint is resolved or cannot be processed further within the bank. The bank is, however, obliged to inform the complainant initially in writing of the outcome of its own investigation within 30 days after having received the complaint. Also, the bank must explain to the complainant the nature of any offer of settlement. Although the bank is not required to offer to have any verbal complaint of a customer treated as a written complaint, the bank is obliged to inform the complainant of his or her right to file a complaint in writing. Although there are requirements to be met for any written complaint, including information concerning the consumer/complainant as well as statement of the alleged wrong, there, strangely, is no mention of how the consumer is to be informed of these requirements. In the event the bank finds the complaint to be valid, it must respond to the complainant between 15 and 30 days after its initial notification. In the event the complainant accepts the resolution offered by the bank, that ends the matter. In the event, however, that the bank does not propose solution within the time frame indicated or the proposed solution is unacceptable to the complainant, the complainant is required to inform the RS Banking Agency in writing with a description of the dispute, when it occurred and the bank's response.<sup>100</sup> It is then for the Banking Agency to resolve itself whether the complainant's claim has validity, in which event the Banking Agency can require the bank to provide the Banking Agency its opinion regarding the claim within 8 days. There is, however, apparently no obligation on the Banking Agency to do so. Within 15 days of receipt of the bank's opinion, the Banking Agency is then to provide the complainant notice of the bank's opinion, as well as "instructions on available mechanism's for the protection of [his or her] rights". The Decision, however, gives no indication as to what appropriate mechanisms, if any, actually exist. Each bank is required to maintain up-to-date records of all complaints it receives, including in respect of the nature of the complaint, the action taken to resolve the complaint, and whether resolution was achieved and, if so, on what basis. Each bank is then further required, on a quarterly basis, to provide the Banking Agency a written report in the Agency's prescribed form regarding these records. Unfortunately, however, the Decision is silent on the need to ensure the regular up-dating of these records by the Banking Agency, as well as on any obligation on the part of the Banking Agency to make these records available to public free of charge.</p> <p>The FBA has not adopted a comparable decision to date.</p>
<b>Recommendation</b>	Banks should be required by statute:

<sup>98</sup> Banks' Association's Code of Ethics, Rule II A) 12

<sup>99</sup> See the Official Gazette of RS, No. 58/10, Official Gazette of the FBiH, 32/10.

<sup>100</sup> It is noteworthy that there is no apparent time limit for a complainant to so inform the Banking Agency.

	<ul style="list-style-type: none"> <li>(i) to have in place a written complaints procedure for the proper handling of any complaint from a customer, with a summary of this procedure forming part of the bank's General Terms and Conditions for any agreement with the customer;</li> <li>(ii) to provide the customer with the name and address of an individual appointed by the bank to deal with the complaint until either the complaint is resolved or cannot be processed further within the bank;</li> <li>(iii) to provide the complainant with a regular written update on the progress of the investigation of the complaint;</li> <li>(iv) to inform the customer/complainant in writing of the outcome of the investigation within 30 days after first receiving the complaint;</li> <li>(v) to explain in simple terms the nature of any offer of settlement being made to the customer/complainant;</li> <li>(vi) to offer to have any verbal complaint of a customer treated by the bank as a written complaint in accordance with the above;</li> <li>(vii) to maintain up-to-date records of all complaints it receives, including in respect of the nature of the complaint, a copy of the bank's response(s), a copy of all other relevant correspondence or records, the action taken to resolve the complaint, and whether resolution was achieved and, if so, on what basis; and</li> <li>(viii) to make these records regularly available for review by the Consumer Ombudsman and applicable Banking Agency or else on the request of that Office or Agency.</li> </ul> <p>Furthermore, there should be a centralized system for the collection and recording of complaints within either the Consumer Ombudsman or the Banking Agencies, and these records should be made public, free of charge, at least on the web on a regular basis.</p>
<b>Good Practice E. 2</b>	<p><b><i>Formal Dispute Settlement Mechanisms</i></b></p> <ul style="list-style-type: none"> <li><b>a. A system should be in place that allows a customer of a bank to seek affordable and efficient recourse to a third party banking ombudsman or equivalent institution in the event the customer's complaint is not resolved to his or her satisfaction in accordance with the procedures outlined in E. 1 above.</b></li> <li><b>b. The existence of, and procedures before, the banking ombudsman or equivalent institution should be set forth in every bank's Terms and Conditions referred to in B. 8 above.</b></li> <li><b>c. The banking ombudsman or equivalent institution should be impartial and act independently from the appointing authority, the banking industry and the specific bank with which the complaint has been lodged.</b></li> <li><b>d. The decision of the banking ombudsman or equivalent institution should be binding upon on the bank with which the complaint has been lodged and this fact, as well as the mechanism to ensure the enforcement of such a decision, should be set forth in every bank's Terms and Conditions referred to in B. 8 above.</b></li> </ul>
<b>Description</b>	<p>In the insurance sector of the RS, the position of RS Insurance Ombudsman was established within the Insurance Agency of the RS, which provides technical and material conditions for his/her work. The Ombudsman performs his/her duty independently; he/she is authorized to receive, follow, and investigate all cases of violation of laws, other regulations, and Code of Business Ethics, to recommend appropriate general measures, provide information on the rights and duties of the insured persons, users of insurance, and injured third parties. The Ombudsman continuously cooperates with insurance companies' representatives, and through media, on regular basis, informs the public on his/her work, and role related to the protection of consumers in the insurance sector.<sup>101</sup></p> <p>When disputes raised by consumers are not resolved amicably within a reasonable period,</p>

<sup>101</sup> See Article 25 of the Law on Insurance Companies of RS (Official Gazette RS, No. 17/05, 1/06, and 64/06), as well as the Insurance Ombudsman's Rulebook and Rules of Procedure.

	<p>most are at a loss as to where to turn. Should the consumer send a written complaint to (a) the relevant Entity-level Inspectorate; (b) the Consumer Ombudsman; (c) the applicable Banking Agency; or (d) the nearest 1<sup>st</sup> instance court?</p> <p>Only one of these alternatives, however, could possibly be satisfactory from anyone's reasonable point of view.</p> <p>If an Inspectorate takes action, so far at least it has chosen to do so in order to punish the commercial bank rather than compensating any aggrieved consumer. When banks object to the findings of Inspectorate Offices, as they have invariably done, the matter proceeds to the lowest level of courts in either Entity and from there, if the bank losses at first instance, on appeal. The process takes years, is unnecessarily costly and brings no specific relief to the individual consumer who has complained to the Inspectorate.</p> <p>The Consumer Ombudsman is ill-equipped to deal with any individual complaints and, by the terms of the Consumer Protection Act, is, rather, charged with responsibility to weigh consumers' interests as a class. It does not have power to mediate between disputes between individual consumers and their banks and render judgments that are binding on banks in such cases.</p> <p>Any case brought by a consumer to court will invariably cost the consumer far more than the value of the claim and will, in most instances, take years to resolve.</p> <p>To date at least, only the RS Banking Agency has established a Banking System Ombudsman as an organizational unit within the Agency in charge of fair and speedy resolution of misunderstandings and disputes, via conciliation, mediation, or other similar mechanism.<sup>102</sup></p> <p>Although the Code of Ethics of the Banks' Association provides for a Court of Honor to deal primarily with disputes between banks,<sup>103</sup> it has the temerity to allow "all interested parties, including the media and the public"<sup>104</sup> the right to receive a written response from a bank within 10 days following a request to respond to any allegation that the bank is in breach of the Code of Ethics or the law. There is nothing here, however, regarding any allegation of a breach of contract. "If a bank ignores the request or does not provide adequate evidence of its business in accordance with the Code or provisions of the law, the interested party may file charges against the bank with the Association's Court of Honor."<sup>105</sup> This Court is then required, within 90 days, to determine the facts impartially, consider whether the charges are justified and present its decision. In the event the Court determines that the bank bears responsibility, the Court can: (i) publish a warning to the bank in the bulletin of the Association (ii) issue a reprimand to the bank to be published in the media; (iii) expel the bank from the Association;<sup>106</sup> or (iv) take any other measure "anticipated by the Association's deeds".<sup>107</sup></p> <p>Not only is this "Court" unable by its Rules to provide any remedy to an aggrieved consumer, the ultimate arbiter in any case is the management board of the Banks' Association which cannot possibly be, or be seen to be, impartial in any dispute between a consumer and a member-Bank. It is no wonder, therefore, that the Court of Honor has never dealt with a complaint from a consumer.</p>
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<sup>102</sup> The Ombudsman was appointed in September 2001, as per Decision on Appointment of the Banking System Ombudsman of the Republika Sprska (Official Gazette RS, No. 70/11)

<sup>103</sup> See paragraphs 2 through 8 of Section II D) of the Code of Ethics.

<sup>104</sup> Query whether this gives standing to an individual consumer to request a response from his or her bank.

<sup>105</sup> Note, however, that, by Article 8 of the Rules of Procedure for the Court of Honor, proceedings before the Court "may be initiated by one of the interested parties, members of the Association". Query, therefore, whether, for purposes of the Rules of Procedure, an "interested party" can only be a member of the Association.

<sup>106</sup> Expulsion from Association membership requires: (a) a finding that the bank has repeatedly breached the Code, notwithstanding at least one public warning, [and/or] (b) a finding that the bank has fundamentally hurt the reputation of the banking system, its institutions or individual members of the Association. It is not clear whether "and" or "or" is correct.

<sup>107</sup> Note, however, that no additional measure can bring individual relief to any aggrieved consumer, as such.

<b>Recommendation</b>	<p>There should be a system in place that allows a customer of a bank to seek affordable and efficient recourse to a third party (whether a banking ombudsman or equivalent independent institution) in the event that the customer’s complaint is not resolved to the customer’s satisfaction under internal procedures of the bank.</p> <p>A State- or Entity-level dispute resolution mechanism should be considered that is: (a) impartial; (b) transparent; (c) professionally competent in matters of banking products and services and of consumer protection in these respects and, therefore, effective, fair and trusted by all concerned; (d) informal; (e) rapid; (f) inexpensive to the parties and to society as a whole; and (g) empowered to deliver judgments that are binding on the parties, at least in respect of sums not exceeding a certain reasonable limit. And it is suggested that the Central Bank establish a working group for the purpose.</p> <p>The aim would be to establish, by statute, either a State-level office of banking services ombudsman or respective Entity-level offices of banking services ombudsmen, with jurisdiction over all types of consumer-related banking services disputes Given that a first step in this direction has already been made by the RS Banking Agency by creating a Banking System Ombudsman, it is advisable that this scheme be also implemented by the FBiH Banking Agency.</p> <p>There should be a statutory requirement that the third party mechanism or ombudsman be impartial and act independently from the authority appointing the third party, the banking industry and the specific bank with which the complaint has been lodged.</p> <p>And the decision of the independent third party should be binding on the parties (or at least binding upon the bank against which the complaint has been lodged) in the event the sum in question is less than a certain fixed amount.</p> <p>In these respects, existing models are worthy of analysis, including those of the EU generally and of Ireland in particular.<sup>108</sup></p> <p>Also, there has been much success in instituting alternative (i.e. out-of-court) mechanisms to resolve disputes arising in the field of civil construction and engineering in BiH. It would make good sense, therefore, to consider applying, as well, the lessons learned from this valuable experience to the resolution of disputes between consumers and their banks.</p>
<b>SECTION F</b>	<b>GUARANTEE AND COMPENSATION SCHEMES</b>
<b>Good Practice F. 1</b>	<p><b><i>Depositor Protection</i></b></p> <ul style="list-style-type: none"> <li><b>a. The law should ensure that the regulator can take prompt corrective action on a timely basis.</b></li> <li><b>b. The law on deposit insurance should be clear on:</b> <ul style="list-style-type: none"> <li><b>(i) the insurer;</b></li> <li><b>(ii) the classes of those depositors who are insured;</b></li> <li><b>(iii) the extent of insurance cover;</b></li> <li><b>(iv) the holder of all funds for payout purposes;</b></li> <li><b>(v) the contributor(s) to this fund;</b></li> <li><b>(vi) each event that will trigger a payout from this fund to any class of those insured; and</b></li> <li><b>(vii) the mechanisms to ensure timely payout to depositors who are</b></li> </ul> </li> </ul>

<sup>108</sup> For further information on alternative dispute resolution schemes in Europe and on fundamentals for the establishment of financial ombudsmen, see the consultation draft “Resolving Disputes between Consumers and Financial Businesses”, available at <http://www.worldbank.org/consumerprotection>

	<b>insured.</b> <b>c. In the absence of deposit insurance, there should be an effective and timely payout mechanism in the event of insolvency of a bank.</b>
<b>Description</b>	<p>The Law on Deposit Insurance in Banks of BiH provides for a deposit insurance fund which is accumulated and managed by the Deposit Insurance Agency of BiH.<sup>109</sup></p> <p>Although all commercial banks operating in BiH are requested to join the deposit insurance scheme, not all meet the criteria for membership set by the Deposit Insurance Agency. Member banks are obliged to exhibit the Agency's logo prominently and at all times.</p> <p>The responsibilities of the Deposit Insurance Agency include:</p> <ol style="list-style-type: none"> <li>a) insuring eligible deposits in member banks;</li> <li>b) issuing membership certificates to those banks that qualify for participation in the deposit insurance program;</li> <li>c) investing the assets of the deposit insurance fund. and</li> <li>d) paying out deposit insurance amounts in respect of depositors holding eligible deposits on the occasion of a member bank's cessation of operations.<sup>110</sup></li> </ol> <p>Although the amount of insured deposit was originally set at the low level of KM 5,000 and covered both natural and legal persons, with effect from 24 December 2008, the sum was increased to KM 20,000 and coverage restricted to natural persons only. Henceforth, the Fund's Management Board is authorized to determine the amount of the insured deposit and have this amended amount take effect on publication in the BiH Official Gazette. Correspondingly, in April 2010 the sum was further increased to KM 35,000.<sup>111</sup></p> <p>If a depositor has more than one account with the same deposit taker, all accounts are added together and treated as one account.</p> <p>The law is clear on each of the matters outlined in b. above and it accords with good practice.</p>
<b>Recommendation</b>	No recommendation.
<b>Good Practice F. 2</b>	<b><i>Insolvency</i></b> <b>a. Depositors should enjoy higher priority than other unsecured creditors in the liquidation process of a bank.</b> <b>b. The law dealing with the insolvency of banks should provide for expeditious, cost effective and equitable provisions to enable the maximum timely refund of deposits to depositors.</b>
<b>Description</b>	<p>The rules regarding bankruptcy proceedings for commercial banks are set forth in the Entities Laws on Bankruptcy and Liquidation which are generally applicable to legal entities, as modified, however, by the respective Laws on Banks regarding temporary management, provisional administration and receivership.</p> <p>Immediately after payment of the cost of insolvency proceedings, the funds remaining are distributed, for the satisfaction of the principal sum of creditors' claims, in the following order of priority:</p> <ol style="list-style-type: none"> <li>1) bank's debts which resulted from advances of funds or other obligations created during the provisional administration of the bank or its liquidation;</li> <li>2) claims by secured creditors up to the value of their security;</li> <li>3) claims of the Deposit Insurance Agency for reimbursement of payments of deposits up to the maximum set out in the Law on Deposit Insurance;</li> <li>4) deposits of natural persons, up to a maximum of the equivalent of KM 35,000 per depositor;</li> </ol>

<sup>109</sup> See Official Gazette of BiH, Nos. 20/02, 18/05, and 100/08.

<sup>110</sup> Idem, first paragraph of Article 15.

<sup>111</sup> Decision on the Level of the Insured Deposit (Official Gazette of BiH, No. 29/10)

	<p>5) other deposits, including deposits of natural persons above the equivalent of KM 35,000 per depositor;</p> <p>6) dormant deposits transferred to the Ministry;</p> <p>7) claims by other creditors;</p> <p>8) claims by shareholders.<sup>112</sup></p> <p>Thus, depositors do enjoy higher priority over other unsecured creditors in the liquidation process of a bank.</p>
<b>Recommendation</b>	Query whether the Central Bank Commission, joined for these purposes by the Deposit Insurance Agency of BiH, should consider to what extent, if at all, the provisions of the Laws on Banks dealing with the insolvency of banks should be amended to provide more expeditious, cost effective and equitable provisions with a view to ensuring the maximum timely refund of deposits to depositors.
<b>SECTION G</b>	<b>CONSUMER EMPOWERMENT</b>
<b>Good Practice G.1</b>	<b><i>Financial Education in Schools</i></b> <b>Information about basic financial products, such as current and deposit accounts, leasing contracts, term loans and mortgages and credit cards, as well as how to calculate and compare interest rates, should be taught in schools. Schools should also teach basic financial concepts such as risk vs. return, long-term financial planning and consequences of over-indebtedness.</b>
<b>Description</b>	<p>The public school curriculum does not include the topic of financial education at any level. However, there are some isolated initiatives that seek to reach students in order to enhance their financial capabilities. For example, ProCredit Bank has organized seminars oriented towards school students on the importance of saving money.</p> <p>Although the 2009 National Annual Program on Consumer Protection did include one measure on financial education among its 100 lines of action, namely: "Raising the level of awareness and education pertaining financial services", responsibility for carrying this out fell only to banks and other financial institutions. In its April 2009 meeting, the EU Expert Group on Financial Education suggested that the European Commission recommend that all New Member States of the European Union develop national strategies on financial education. However, there are apparently no on-going discussions at either Entity level regarding any financial education strategy or programs.</p>
<b>Recommendation</b>	<p>Financial education in schools needs development. The Ministry of Civil Affairs of Bosnia and Herzegovina, Division of Education, Science, Culture and Sports, should consider the inclusion of topics on financial education in the public school curriculum.</p> <p>There is also need to develop a national program on financial education. BiH should take into account the EU Expert Group on Financial Education's recommendation and start to develop a national strategy on financial education.</p>
<b>Good Practice G.2</b>	<b><i>Financial Education through the Media</i></b> <b>a. Print and broadcast media should be encouraged to cover issues related to retail financial products.</b> <b>b. Regulators and/or industry associations should provide sufficient information to the press and broadcast media to facilitate analysis of issues related to financial products and services.</b>
<b>Description</b>	Recently, newspapers and radio and television programs have paid more attention to financial consumer news and the provision of information to consumers, given the issues last year with changes of interest rates for in some consumer loans. However, a common perception of specialists working on financial sector issues in BiH is that media coverage has been less than well-informed and professional.

<sup>112</sup> See Article 63 of the FBiH Law on Banks. See also the corresponding provision in Article 119 of the RS Law on Banks.

	<p>Journalists need to be educated in order to understand banking services and thus to be able to cover the stories objectively. Many are concerned that this was not the case in respect of those journalists who were determined in 2009 to carry out a smear campaign against all banks as irresponsible “loan sharks” seeking to maximum profits at the expense of consumers.</p> <p>The Central Bank has participated more actively in recent months in providing information and independent opinion on financial, and more specifically banking, sector issues.</p>
<b>Recommendation</b>	<p>More information should be given more frequently by regulators and the banking association to the media and from the media to the public. There should be a program to provide financial education or training to journalists covering financial sector issues.</p>
<b>Good Practice G.3</b>	<p><b><i>Information Resources for Consumers</i></b></p> <ul style="list-style-type: none"> <li><b>a. Financial regulators should seek to improve consumer awareness of financial products and services by devising, publishing and distributing independent information on the costs, risks and benefits of such products and services.</b></li> <li><b>b. Non-governmental organizations should be encouraged to provide consumer awareness programs to the public regarding financial products and services.</b></li> </ul>
<b>Description</b>	<p>Some government agencies are starting to take into account the importance of providing financial information to consumers. The RS Banking Agency has developed relevant resources for consumers on its website. Information ranges from basic explanations of key financial terms to tables that compare the main products being offered by each financial institution.</p> <p>The Central Bank recently started to develop information resources for consumers. It has set up an “Educational component” section on its website, with the objective of “promoting economic literacy and disseminating knowledge”. The section has been developed in partnership with USAID, and includes information on factoring, leasing and capital markets. Information includes basic concepts of each market, explanation of the market, products and basic terms, basic legal provisions, and key statistics. In addition, the Central Bank has publicly acknowledged the importance of developing financial education initiatives. In March 2009, on occasion of the launch of ProCredit’s campaign “Days of Transparency”, the Governor of the Central Bank stated that the institution supported the development of financial education in the population. In his words: “Financial education is an important segment of any bank’s business operations, and, hence, special attention needs to be devoted to it so that the requirements referring to financial services use are more comprehensible, and clients protected and satisfied”.</p> <p>Also, some minimal component of consumer education and awareness related to financial services has been included as part of the European Commission project on Single Economic Space, but no progress has apparently yet been made.</p> <p>Regarding consumer organizations, last year Putokaz, a consumer NGO in FBiH, was granted funds to print a small leaflet summarizing the main rights of consumers, based on the Consumer Protection Act. Plava Sfera, the largest consumer NGO in RS, has printed leaflets with the full text of the Consumer Protection Act, and distributed them in its premises to any consumer who asks for advice related to consumer protection. Plava Sfera is in the process of establishing a consumer research and information center in Banja Luka and is planning to publish a leaflet on the main issues regarding credit cards, as well as one on how to read a banking product contract.</p>
<b>Recommendation</b>	<p>Government authorities could provide more information in plain language on financial products and services to improve consumer awareness.</p> <p>Consumer associations should be more involved in the development of consumer awareness programs on financial issues. However, consumer NGOs are weak and under-funded, and even some government funds allocated to them are approved very late in the year, which</p>



	works against adequate elaboration of projects and against appropriate planning.
<b>Good Practice G.4</b>	<p><b><i>Financial Consumer Advocacy</i></b></p> <p><b>In the development of financial sector policy, government and state agencies need to consult with banks and consumers and their respective associations in order to develop proposals that meet the needs and expectations of these key stakeholders. To ensure that consumers are actively involved in the policy development process, the government, or private sector organizations, should either provide appropriate funding to non-governmental organizations for this purpose or create a special entity to lobby on behalf of consumers in the policy-making process.</b></p>
<b>Description</b>	Although consumer associations are members of the Consumer Protection Council, their participation seems less than significant. On the one hand, they have problems of stable sources of funding for the development of their daily activities, as well as a lack of professional expertise. On the other hand, the umbrella organizations for consumer associations in each Entity are not well coordinated. As a result, their capacity to conduct any, let alone effective, consumer advocacy, especially in respect of financial sector issues, is adversely affected.
<b>Recommendation</b>	Consumer associations should play a key role in financial consumer protection since they are generally the first place consumers go for advice and information, especially in remote areas of the country. Consumer associations should be allies of the State and the Entities in the task of protecting consumer rights. But, in order to provide an effective service to consumers, as well as advocacy for financial consumers in the policy-making process, consumer associations need adequate and stable sources of funding, as well as significantly greater institutional capacity.
<b>Good Practice G.5</b>	<p><b><i>Measuring Financial Capability</i></b></p> <p><b>In order to ensure that financial consumer protection, education and information initiatives are proportionate and appropriate, and in order to measure the effectiveness of those initiatives over time, the financial capability of consumers should be measured periodically by way of large-scale market research that gets repeated from time to time. For these purposes, the term “financial capability of consumers” means the ability to manage money, keep track of finances, plan ahead, choose appropriate financial products and services and stay informed about financial matters.</b></p>
<b>Description</b>	Although some limited surveys on access to finance of micro-credit clients and low-income households have been conducted in BiH in recent years, no nationwide financial literacy survey has been conducted in BiH. A survey was funded in October 2008 by the European Fund for Southeast Europe (EFSE) in the Tuzla Canton, complemented by focus groups in Tuzla and Foca. The study included questions on several topics, such as household composition, availability of financial products, indebtedness, attitudes and consumer protection. The survey provided information on the level of knowledge of certain financial concepts, complaints procedures, information received by the credit institution, trust in respect of financial institutions, attitudes towards savings per household, among other matters. This constituted a useful step to understanding the level of knowledge, attitudes and challenges of consumers of financial services particularly in Tuzla.
<b>Recommendation</b>	<p>A national survey of financial literacy should be conducted as a first step in the development of a national program of financial education. A nationwide financial literacy survey would provide a baseline assessment of the current levels of financial capability and serve as an essential means for measuring the future impact of consumer protection and financial education programs.</p> <p>The survey should be broken down by geographic area, socio-economic levels, years of formal education, gender, age and other standard variables for sociological studies. Segmentation would provide policy-makers with insight into the key issues faced by consumers of banking products and services as these same consumers look for ways to meet their debts and plan their financial futures.</p>

<b>SECTION H</b>	<b>COMPETITION AND CONSUMER PROTECTION</b>
<b>Good Practice H. 1</b>	<b><i>Regulatory Policy and Competition Policy</i></b> <b>Financial regulators and competition authorities should be required to consult with one another for the purpose of ensuring the establishment, application and enforcement of consistent policies regarding the regulation of financial services.</b>
<b>Description</b>	<p>By Article 40 of the FBiH Law on Banks, banks must refrain from entering into transactions or engaging in practices of any kind that would provide, alone or together with others, a position of dominance in the financial markets. The RS Law on Banks contains substantially the same provision.<sup>113</sup> As a result, it is the responsibility of the Banking Agencies to ensure that banks comply.</p> <p>Notwithstanding, however, that the Banking Agencies are responsible in this way for ensuring competition in the financial markets and the Competition Council is charged with enforcing the Law on Competition which applies to all sectors of the BiH economy, including the delivery of banking services, there is nothing in the law to require any, let alone regular, consultations among the two Banking Agencies and the Competition Council so as to ensure consistency in establishing, applying and enforcing financial services regulations. Although <i>ad hoc</i> consultations do apparently take place from time to time among the Banking Agencies and the Competition Council to discuss issues of common concern, meetings of this sort are rare.</p>
<b>Recommendation</b>	The Banking Agencies and the Competition Council should be required, by law, to consult regularly with one another so as to ensure the establishment, application and enforcement of consistent policies regarding the regulation of financial services generally and pertaining to competition in the market in particular.
<b>Good Practice H. 2</b>	<b><i>Review of Competition</i></b> <b>Given the significance of retail banking to the economy as a whole and to the welfare of consumers, competition authorities should:</b> <ol style="list-style-type: none"> <li><b>a. Maintain a watching brief on competition in retail banking; and</b></li> <li><b>b. Conduct and publish periodic assessments of competition in retail banking, and make recommendations on how competition in retail banking can be enhanced.</b></li> </ol>
<b>Description</b>	<p>The Competition Council of BiH is responsible for ensuring the application and enforcement of the Law on Competition of BiH. It does not maintain, however, any watching brief on competition in banking.</p> <p>And the Council, likewise, has not conducted and published any periodic assessments of competition in retail banking, nor has it made any recommendations as to how, in its view, competition in retail banking in BiH would be enhanced.</p>
<b>Recommendation</b>	The Competition Council should consider conducting and publishing periodic assessments of competition in retail banking, and make recommendations as to how competition in BiH retail banking could be enhanced.
<b>Good Practice H. 3</b>	<b><i>Licensing of Legal Entities</i></b> <b>All legal entities that either collect funds from consumers or lend funds to consumers should be licensed and supervised.</b>
<b>Description</b>	All legal entities that either collect funds from consumers or lend funds to consumers are required to be licensed to operate by the respective Entity's Banking Agency and this Agency then supervises the operations of these entities.

<sup>113</sup> See Law on Banks of RS, Article 88.

<b>Recommendation</b>	No recommendation.
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## ANNEX

### **Variable Interest Rate Provisions in Consumer Loans** **for** **Discussion Purposes**

The rate of interest on your Loan may vary from time to time and to the extent indicated below as a result solely of a fluctuation in the Base Rate which by Directive ..... of the Banking Agency of the [Federation of BiH][Republic of Srpska] is the Europe Inter Bank Offering Rate (“EURIBOR”) as published each weekday in the .....

The initial annual rate of interest on your Loan is ..... %. This is ..... % higher than EURIBOR as of the date hereof.

An adjustment to this annual rate may be made every [30][90][120][182][365] days following the date hereof based solely upon EURIBOR that prevails 30 working days prior to the adjustment date, provided that:

- a) no single adjustment may result in an increase or decrease in the prevailing rate of ..... %;
- b) the prevailing rate can never exceed \_\_\_% or be less than ..... %; and
- c) you are informed in writing of the proposed new rate not less than 15 working days prior to the date the change in annual interest rate is to take effect (the “adjustment date”).

On receipt of this information in writing, you have the following options:

- i) do nothing, in which case the new rate will apply to your Loan as of the adjustment date;
- ii) pay off the outstanding principal and interest on your Loan prior to the adjustment date without penalty; or
- iii) indicate in writing to us that you require the term of your Loan to be extended so that the monthly payments you are making remain essentially the same.