

Chapter 13

Consumer protection

One of the areas of law that has known great dynamics over the past two years is the one concerning the protection of consumers' rights. The said dynamics was due to the fact that as of its Accession Date, Romania had to have a law corpus governing consumer protection that met the European standards in this regard. Consequently, both Parliament and Government have shown a special interest for this particular matter, given the large number of enactments that have been modified, supplemented or restated in order to comply with European norms and to confer greater protection to consumers and make producers and suppliers more aware of their responsibilities.

Applicable Legislation

- Law no. 296/2004 – the Consumption Code, as amended and republished, (the “Consumption Code”);
- Government Ordinance no. 21/1992 on consumers' protection as further amended and republished (the “GO no. 21/1992”);
- Law no. 12/1990 regarding the protection against unlawful commercial activities, as further amended and republished (the “Unlawful Commercial Activities Law”);
- Law no. 449/2003 regarding product sales and corresponding guarantees, as amended and republished (the “Product Guarantees Law”);
- Government Ordinance no. 99/2000 regarding the commercialization of products and market services, as amended and republished (the “GO no. 99/2000”);
- Government Ordinance no. 130/2000 regarding the protection of the consumers in the conclusion of long distance agreements, as amended and republished (the “GO no. 130/2000”);
- Government Emergency Ordinance no. 97/2001 enforcing the production, circulation and commercialization of nutriments (the “GEO no. 97/2001”);
- Law no. 608/2001 on the evaluation of product conformity, as amended and republished (the “Product Conformity Law”);
- Law no. 240/2004 on producers' liability for the damages caused by products with defects, as republished (the “Producers' Liability Law”);
- Law no. 363/2007 on the fight against incorrect commercial practices in the trader – consumer relationships and the harmonization of current enactments with the European legislation in the field of consumer protection (the “Incorrect Commercial Practices Law”);

- Law no. 193/2000 regarding the abusive clauses of the agreements concluded between merchants and consumers, as further amended (the “Law on Contractual Abusive Clauses”);
- Government Decision no.1022/2002 on the regime of products and services potential harmful for human life and health, work security and environment protection (the “GD no. 1022/2002”);
- Government Decision no. 748/2007 on the organization and operation of the National Authority for Consumers’ Protection (the “GD no.748/2007”).

The above-mentioned legal provisions regulate the following:

- 1) Consumers’ rights;
- 2) Traders’ obligations;
- 3) Guarantees and quality for products and services;
- 4) Abusive clauses in contracts;
- 5) Organizations responsible for protecting consumers’ rights.

1. Consumers’ rights

According to the provisions of the GD no. 21/1992, the consumer is any person acquiring, using or consuming, as final beneficiary, the products obtained from a merchant or benefiting from the services rendered by the latter.

The consumer has the following main rights:

- (i) the right to be protected against the risk of purchasing a product or receiving services which may harm their health, life or personal safety, or which may negatively affect their rights and legitimate interests;
- (ii) the right to have access to complete, precise and accurate information regarding the essential characteristics of the products acquired and the services rendered so that the decision he takes relating to these services and products corresponds to his needs, as well as the right to get proper commercial training in his quality of consumer;
- (iii) the right to have access to markets which provide a wide variety of quality products and services;
- (iv) the right of redress, by legal means, for damages resulting from the inadequate quality of products and services;
- (v) the right to organize associations for consumer protection for the purpose of safeguarding consumer interests.

The provisions of GD no. 21/1992 grant also certain rights to consumers, upon entering into agreements with traders:

- (i) the right to take proper decisions with respect to the acquisition of products and services by concluding contracts that should not promote abusive sale techniques or influence the consumer’s options;
- (ii) the right to be informed completely, accurately and precisely with regard to the main features of the products and services rendered by the traders, so that the option of

choosing such products and/or services is taken rationally and in accordance with consumers best interests;

- (iii) the right to benefit from clear and precise drafting of the contractual clauses, including those relating to quality characteristics and guarantee conditions, the accurate indication of price and tariff, as well as establishing the exact conditions of granting credits and paying interests;
- (iv) the right to be exonerated from paying products and services not required and not accepted;
- (v) the right to be compensated for damages occurring as a result of deficiency of products and services which do not correspond to the contractual provisions;
- (vi) the right to be provided with the necessary service and spare parts throughout the product average life, as set forth in the normative technical documents or declared by the producer or agreed upon by the parties;
- (vii) the right to pay, for products and services, prices that were agreed upon at the time of purchase the increase of the initially set price is possible only with consumer's consent;
- (viii) the right to have the purchased products and the services fixed or repaired free of charge, as well as to receive damages for losses occurring as a result of deficiency of products and services noticed within the guarantee or validity period after the expiring of this period, the consumers have the right to have fixed or repaired the purchased products which could not be used according to their purpose, because of hidden defects occurred throughout their average life.

2. Traders' obligations

According to the GD no. 21/1992, a trader is any natural or legal person, which produces, imports, transports, stores or markets products or parts thereof, or renders services.

The traders have the following main obligations:

- trade only those products and services which have been tested and certified according to legal norms and meet the qualitative conditions set out in agreements, so that consumer's life, health and personal safety is not to be affected;
- stop deliveries, or, if the case, recall from the market or from the clients those products which according to the authorities empowered by law or to their own specialists do not meet the prescribed qualitative characteristics or which could affect consumers' life, health or personal safety;
- announce forthwith the existence on the market of any product which affects or may affect life, health or security of the consumers;
- ensure hygienic and sanitary conditions of production, during the transportation, manipulation, storing and selling process, according to sanitary norms in force.

3. Guarantees and quality for products and services

The merchants are bound to remedy all and any deficiency which becomes evident within the validity or the warranty period of the products, including the long-term use ones, and which are not caused by the consumer. They are responsible for the hidden defects of the products which do not allow for the intended use of the product or service by the consumer or which may affect consumers' health, life and personal safety. It is noteworthy that the warranty is

legally binding on the seller, within the conditions specified in the corresponding warranty declaration. The declaration must contain reference as to the rights legally bestowed upon the consumer and declare that the aforementioned are in no way hindered by the awarded warranty. Furthermore, the law stipulates that the warranty must keep a simple and intelligible language.

Remarks:

- *The warranty period is a limited time period set by the manufacturer within which the purchased product should maintain its prescribed qualities and functions ;the consumer has the right to have the product repaired or replaced free-of-charge if such defects have not been caused by the consumer. The warranty period begins at the time of purchase by the consumer.*
- *The validity term of products refers to the limited time set by the manufacturer, during which the product may be consumed while sustaining its prescribed quality characteristics, as long as the required conditions for the products' transportation, handling, storage and consumption are met.*
- *The hidden defects are quality defects of a delivered product or rendered service, existing at the time of purchase or rendering, which are not known or could not have been known or detected further to a reasonable inspection performed by the consumer.*

The consumers have the right to require such defective products to be repaired or replaced.

It is worth mentioning that the said law time-bars the traders' liability for products' conformity. Pursuant to Article 16 of the Product Guarantees Law, the trader's liability is entailed if the product's lack of conformity appears within two years from the date of the product's delivery. In order to hold the trader accountable, the consumer must also prove to have been diligent, as he must inform the trader of the product's lack of conformity within two months from the date that he first acknowledged it.

Any contractual terms or agreements concluded between the seller and the consumer before the lack of conformity is brought to the seller's attention which directly or indirectly waive or restrict the consumer's rights resulting from Law or Product Guarantees is null and void and therefore not binding on the consumer.

According to GD. No. 1022/2002, the admission on the market of non-alimentary products and/or services is allowed only if such products are not harmful for the human life and health, the work security and the environment protection.

Such products and services may be traded if accompanied by the conformity statement drafted by the producer, supplier and/or the importer, when applicable.

4. Protection of the consumers. Abusive Clauses

The applicable regulations require for any agreement concluded between a trader and a consumer to set out clear and comprehensible clauses, which do not require any professional training in order to be understood by the signatory parties. In the event of any doubt referring to any clause of the agreement, the interpretation of such clause shall be made in favor of the consumer.

The traders are bound not to insert in the agreements any abusive clauses. By abusive clauses are to be understood the contractual clauses which have not been individually negotiated by the parties and, contrary to the requirement of good faith, they cause significant

imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.

The law provides for a full list of the clauses that are deemed to be abusive and therefore subject to annulment and fines incumbent upon the trader, among which the following are listed:

- a) making an agreement binding on a consumer whereas provision of services by the seller or supplier is subject to a condition whose realization depends on his own will done;
- b) requiring any consumer who fails to fulfill his obligation to pay a disproportionate high sum in compensation;
- c) authorizing the seller to unilaterally terminate the agreement without providing for the same opportunity of the consumer.

A contractual clause is regarded as not individually negotiated and therefore abusive where it has been drafted in advance and the consumer has therefore not been able to influence the substance of the clause, particularly in the context of the pre-formulated standard contracts.

Any standard agreements proposed by the suppliers of activities deemed as being legal or natural monopoly have to be approved firstly by the National Authority for Consumer's Protection and Competition Council, under the sanction of annulment, before producing any legal effects between the parties.

5. Incorrect, Deceiving and Aggressive Commercial Practices

5.1. Incorrect Commercial Practices

The concept above is defined by the Romanian legislator, in accordance with the EU enactments, as any practice that is contrary to professional diligence or which distorts or is able to essentially distort the medium consumer's behavior.

5.2. Deceiving Commercial Practices

A deceiving commercial practice exists either in the form of action or omission. A commercial practice qualifies as a "deceiving action" if it contains false information, or whether under any circumstances it misleads or is able to mislead the medium consumer in as much as he takes the decision to purchase a product, decision that he otherwise would have not taken, although the information provided to him is correct in respect of the product's existence and nature, its main characteristics, pricing and warranty.

The law under discussion also qualifies as deceiving practice any trading activity, including comparative advertising, which creates confusion for the consumer in respect of two or more products.

In what "deceiving omissions" are concerned, the legislator indirectly defines them in Article 7 of the Incorrect Commercial Practices Law by stating that they come into being if at the time of presenting a product's situation an essential information on the former is not revealed. Note must be made that in case such information had been provided to the consumer, he would not have made the decision of purchasing the respective product.

5.3. Aggressive Commercial Practices

Pursuant to the provisions of Article 8 of the Incorrect Commercial Practices Law, a commercial practice is considered aggressive if, in the context of presenting the actual situation, and having regard to all the characteristics and circumstances, it limits or has the possibility of significantly limiting the medium consumer's freedom of choice or behavior as to the product, by harassment, constraint, including the use of physical force or unjustified influence, and, as a consequence, it determines or is able to determine the consumer to take the decision to purchase a product or service, decision that otherwise he would not have taken.

In order to fulfill its scope, the Incorrect Commercial Practices Law provides also for sanctions for the actions or omissions that it considers as incorrect. The authority in charge of applying the sanctions and of ensuring that consumers are in no way affected by the traders' illicit practices is the National Authority for Consumers' Protection. A list of practices that under all circumstances qualify as incorrect can be found in Annex I to the above said law.

6. Organizations responsible for protecting consumers' rights

6.1. National Authority for Consumers' Protection ("NACS")

Pursuant to GD no. 748/2007, NACS is the specialized central public administration body in this matter, being subordinated to the Romanian Government under the coordination of the minister for SMEs, trade, tourism and liberal professions and has the following supervision and control powers:

- (i) to elaborate in cooperation with other competent public administrative bodies and non-governmental organizations the national action program for consumer protection;
- (ii) to submit the Government for approval and to indorse enactment bills in the various fields relating to the consumers' protection;
- (iii) to run surveys and tests on the product and services quality and inform the public on its findings;
- (iv) to order measures to mitigate the consequences of production import and trading of product and services that do not comply with legal provisions in terms of consumer protection;
- (v) to permanently inform consumers on dangerous products that might affect their health and safety;
- (vi) to support consumer protection associations and coordinate with them the process of consumer information and awareness;
- (vii) to ascertain minor offenses and to apply the respective fines, and to notify competent authorities responsible for criminal offenses;
- (viii) to control if the measuring means used on the market are accompanied by the documents required by law in the metrological field;
- (ix) to establish taxes for performing of the analyses, expertise, laboratory certificates, authorizations, consultancy, training courses or other services provided by the law;
- (x) to authorize operations concerning precious stones and precious metals;

- (xi) to establish and endorse the trademarks used by the national producers and importers or other merchants.

6.2. Consumers' Protection Associations ("CPA")

These organizations are legal persons whose only purpose is to protect the rights and the legitimate interests of its members or of customers in general, without aiming to obtain profit. CPA have certain rights aimed at efficiently protecting the consumers' rights:

- (i) the right to receive support from the local and central public administration authorities, in order to achieve their objectives;
- (ii) the right to require the proper authorities to take measures aimed at stopping the manufacturing or at withdrawal from the market of products or services which do not meet the quality parameters stipulated by the law or endanger the consumers' life, health or personal safety;
- (iii) the right to file legal action to safeguard the rights and legitimate interests of their members;
- (iv) the right to inform the public through mass-media about the functional defects of products and services, as well as about their harmful effects on the consumers;
- (v) the right to act on their own in order to ascertain those merchants who are not observing the consumers' rights stipulated by the law.

6.3. Consumers' Protection Consulting Councils ("CPCC")

CPCC are established both at national and local level and comprise the representatives of both public administration and CPA. They aim at the unitary enforcement of consumers' protection policies. They have the character of a consulting organization and ensure, at the relevant level, the informational and organizing necessary framework in order to:

- (i) establish and enforce the consumers' protection policy;
- (ii) correlate actions taken by authorities of the public administration to those taken by the non-governmental organizations with the competence in accomplishing the consumers' protection policy.

The consumers' protection consulting council is made up of:

- a) Representative of all public administration authorities having general or specific competence in the consumers' protection domain and having set up organizing structures at the respective level.
- b) Prefect or Mayor, as the case may be, or their representatives;
- c) Representatives of the consumers' protection associations;
- d) As the case may be, representatives of other organizations.

The Government establishes the members, the attributions and the organizing and functioning of the consumers' protection consulting council for each level.

6.4. Inter-ministerial Council for Quality Control and Synchronization of Technical Regulations (the "Council")

The Council was established by the GD no. 57/1999 as a consulting body having no legal entity, functioning within the National Agency for Science, Technology and Innovations.

The Council ensures the cooperation between the central public administration authorities, on the one hand, and the civil society structures, on the other hand, in order to:

- (i) draw up and correlate policies relating to setting up and developing the quality infrastructure, synchronizing the technical regulations, authorizing, accreditation, standardization and controlling of products and services, and consumers' protection;
- (ii) promote and support technical renewal and innovation, promote competition and export-import attractiveness;
- (iii) create the conditions for Romania to participate at the European Protocol on the evaluation of conformity and accelerating the process of Romania's adhesion to the European Union.

6.5. Inter-ministerial Committee for the Product and Services Market Supervision and Consumer Protection (the "Committee")

GD no. 681/2001 established the Committee as a body with no legal entity subordinated to the National Authority for Consumer Protection, aiming at harmonizing mechanisms and instruments on the internal product and services market, as well as insuring consumers' protection. The Committee ensures cooperation between public central administrative authorities and civil structures, in view of:

- (i) developing the National system of surveillance of the products and services market, including all institutions mechanisms and control procedures necessary for life, health, security and economic interests protection of the consumers, as well as environmental protection;
- (ii) improving the legislative and institutional framework in the field, in order to meet the sole European market integration requirements;
- (iii) accelerating harmonization between national legislation with the relevant *aquis communautaire*.