

## Chapter 13

### Consumer Protection

#### 1. General

One of the areas of law that has known great dynamism over the past years concerns the protection of consumers' rights. This was due to the fact that upon EU accession, Romania needed a European standard corpus of law governing consumer protection. Consequently, both Parliament and the Government have shown a special interest for this matter, given the large number of enactments that have been modified, supplemented, restated or adopted in order to comply with European norms and to confer greater protection to consumers, and make producers and suppliers more aware of their responsibilities.

#### 2. Main Regulations

- Law no. 296/2004 on the Consumption Code, as amended and republished (the “**Consumption Code**”);
- Government Decision No. 700/2012 on the organization and operation of the National Authority for Consumers' Protection (“**GD No. 700/2012**”);
- Government Ordinance No. 21/1992 on consumers' protection as further amended and republished (“**GO No. 21/1992**”);
- Government Emergency Ordinance No. 34/2014 on consumer rights in relation to professionals, transposing Directive 2011/83/EU of the European Parliament and of the Council on Consumer Rights (“**GEO No. 34/2014**”);
- Government Emergency Ordinance No. 50/2010 on credit agreements for consumers (“**GEO No. 50/2010**”);
- 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 Emergency Ordinance No. 49/2009 on the freedom of establishment of service providers and of freedom to provide services in Romania, as amended and (“**GEO No. 49/2009**”);
- Government Ordinance No. 85/2004 concerning consumer protection in relation to the conclusion and performance of distance financial services contracts, as amended and republished (“**GO No. 85/2004**”);
- Government Ordinance no. 99/2000 regarding the commercialization of products and market services, as amended and republished (“**GO No. 99/2000**”);

- Government Emergency Ordinance no. 97/2001 enforcing the production, circulation and commercialization of nutrients, as amended and republished (“**GEO No. 97/2001**”);
- Law No. 240/2004 on producers’ liability for damages caused by products with defects, as republished (the “**Producers’ Liability Law**”);
- Law No. 363/2007 on the fight against unfair commercial practices in the trader – consumer relationship, and the harmonization of current enactments with European legislation in the field of consumer protection, as amended and republished (the “**Unfair Commercial Practices Law**”);
- Law No. 193/2000 regarding the abusive clauses of agreements concluded between traders and consumers, as further amended and republished (the “**Law on Contractual Abusive Clauses**”);
- Government Decision No. 1022/2002 on the regime of products and services potentially harmful for human life and health, work security and environment protection (“**GD No. 1022/2002**”);
- Government Ordinance No. 107/1999 on marketing of tourist service packages, as amended and republished, (“**GO No. 107/1999**”); Romanian Civil Code, as further amended and consolidated (the “**Civil Code**”).

The above-mentioned legal provisions regulate the following:

- (i) Consumers’ rights;
- (ii) Traders’ obligations;
- (iii) Guarantees and quality for products and services;
- (iv) Abusive clauses in contracts;
- (v) Organizations responsible for protecting consumer rights.

### **3. General legal framework**

The Civil Code lays down a series of updated or totally new legal concepts so as to keep the pace with the modern and constantly changing social realities.

Since the field of consumer protection is mainly regulated by means of special legal norms, the Civil Code only lays down a few provisions with respect to this area, in order to encompass several rules to which the doctrine and case-law have already attributed a principle value.

Furthermore, the Civil Code protects consumers’ interests by setting out an exception to the rule according to which the statutes of limitation in respect of obligations can be, in principle, modified if the parties so agree.

### **4. Consumers’ rights**

According to the provisions of GO No. 21/1992, a consumer is any person who is acting in respect of the contracts he intends to conclude, for purposes which are outside his/her trade, industry, production, handcraft or to liberal activities.

The consumer has the following main rights:

- (i) the right to be protected against the risk of purchasing a product or receiving a service which may harm their health, life or safety, or which may negatively affect their legitimate rights and 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 they take relating to these services and products corresponds best to their needs, as well as the right to obtain proper commercial training in their 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 their interests.

The provisions of GO No. 21/1992 grant also certain rights to consumers, upon their 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 neither promote abusive sale techniques nor favor the use of unfair commercial practices in sales which would influence their decisions;
- (ii) the right to be presented with a clear and precise version of the contractual clauses, with a precise indication of the price and fees and of the terms of guarantee, should it exist;
- (iii) 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 the consumers' best interests;
- (iv) the right to be exonerated from paying for products and services not required, as well as from paying any tariffs, taxes, commissions, interests and penalties which were not initially laid down in the contract or the annexes thereto;
- (v) the right to be compensated for damages occurring as a result of a deficiency of products and services which does 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 prices that were exactly agreed upon at the time of purchase for products and services; the increase of an initially set price, tariffs, taxes, commissions, interests, penalties and other possible costs initially established is possible only with the consumers written consent;

- (viii) the right to petition consumer protection associations and public authorities regarding the infringement of their legitimate consumer rights and interests, and to make proposals for the improvement of quality in products and services;
- (ix) the right to be notified with a 30 days prior notice on any change in fees, commissions, penalties and other costs;
- (x) the right to be notified with a 30 days prior notice regarding the automatic extension of an agreement in order for the consumer to validly decide, in writing, on an option to extend such validity;
- (xi) the right to have the purchased products and the services fixed or replaced free of charge, as well as to receive damages for losses occurring as a result of any deficiency of products and services noticed within the guarantee or validity period; after the expiration of this period, consumers have the right to have fixed or replaced the purchased products which could not be used according to their purpose, because of hidden defects occurring throughout their average life.

In addition, GEO No. 34/2014 provides that before the consumer is bound by a contract other than a distance or an off-premises contract, or any corresponding offer, the trader must provide the consumer with the following information in a clear and comprehensible manner, if that information is not already apparent from the context:

- (i) the main characteristics of the goods or services, to the extent appropriate to the medium of communication and to the goods or services;
- (ii) the identity of the trader, such as his trading name, his address or his telephone number;
- (iii) the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional transport, delivery or postal charges or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
- (iv) where applicable, the arrangements for payment, delivery and performance, the time by which the trader undertakes to deliver the goods or to perform the services, and the trader's complaint handling policy;
- (v) in addition to a reminder of the existence of a legal guarantee of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees, where applicable;
- (vi) the duration of the contract, where applicable, or, if the contract is of an indeterminate duration or is to be extended automatically, the conditions for terminating the contract and the applicable penalties, if that is the case;
- (vii) where applicable, the functionality for digital contents, including the implementation of technical protection measures;

- (viii) where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of, or can reasonably be expected to be aware of;
- (ix) the compensation applicable and the procedure to grant such compensation in case the quality standards and other contractual clauses are not met;
- (x) the consumer's options regarding personal data collection.

Before the consumer is bound by a distance or off-premises contract, or any corresponding offer, the trader must provide the consumer with, *inter alia*, the following information in a clear and comprehensible manner:

- (i) main characteristics of the goods or services, considering the communication means and the respective goods or services;
- (ii) the identity of the trader, such as his trading name;
- (iii) the address where the trader is established and the trader's telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader rapidly and to communicate with him efficiently and, where applicable, the address and identity of the trader on whose behalf he is acting;
- (iv) the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional transport, delivery or postal charges and any other costs or, where those charges cannot be reasonably calculated in advance, the fact that such additional charges may be payable by the consumer, including the validity period of the offer or of the prices;
- (v) the cost of using distance communication for the conclusion of the contract, where that cost is calculated at a rate other than the basic rate;
- (vi) the arrangements for payment, delivery, performance, the date until the trader undertakes to deliver the goods or to perform the services and, where applicable, the trader's complaint handling policy;
- (vii) where applicable, the information according to which the consumer will have to bear the cost of returning the goods in case of withdrawal and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods;
- (viii) a reminder of the existence of a legal guarantee on the conformity of goods;
- (ix) where applicable, the existence and the conditions of after sale customer assistance, after-sales services and commercial guarantees.

Also, except for certain cases, the consumer has a period of 14 days to withdraw from a distance or off-premises contract, without giving any reason, and without any costs being incurred.

In relation to consumer financing, GEO No. 50/2010 transposes the provisions of Directive 2008/48/EC of 23 April 2008 on credit agreements for consumers, and aims at ensuring a high and equivalent level of protection

of consumers' interests throughout the internal market whilst eliminating national differences amongst creditors which could lead to distortions of competition.

The said GEO focuses mainly on the following aspects concerning a credit agreement:

- (i) providing consumers with clear enough information to allow them to compare different credit offers;
- (ii) expressly stipulating in the offer and in the agreement the annual charge rate applicable to the credit agreement;
- (iii) the right of the consumer to early repayment of the credit.

## **5. Traders' obligations**

According to GO No. 21/1992, a trader is any authorized natural or legal person, who produces, imports, transports, or markets products or parts thereof, or renders services.

Traders have, inter alia, the following main obligations:

- (i) 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 the consumer's life, health and personal safety is not affected;
- (ii) stop deliveries, or, if it is the case, recall from the market or from clients those products which, according to the authorities empowered by law or to their own specialists, do not meet the prescribed or declared qualitative characteristics, or which could affect consumers' life, health, personal safety or economic interests, unless this measure is the only way to eliminate the respective nonconformities;
- (iii) announce forthwith to the competent public authorities as well as the producer of the existence on the market of any product which affects or may affect the life, health or security of the consumers;
- (iv) ensure any technical conditions established by the producer during the transport, manipulation, storing and selling process.

## **6. Warranties and quality for products and services**

Merchants are bound to remedy any and all deficiencies which become evident within the validity or the warranty period of the products, including long-term use ones, and which are not caused by the consumer. They are responsible for any 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.

Beginning in 2016, the concept of warranty is split into two concepts, namely (i) the legal warranty for conformity and (ii) the commercial warranty. Hence, the legal warranty for conformity represents the legal obligations of the vendor towards the consumer to bring the product to conformity, including the restitution of the price paid by the consumer, the repair or replacement of the product if the product does not correspond to the conditions stipulated in the statements related to the warranty, or in the related advertising. The commercial warranty is the warranty granted by the vendor to the consumer to repair or replace the product,

or to reimburse the price paid, if the product does not correspond to the conditions stipulated in the statements related to the warranty or in the related advertising.

It is noteworthy that the commercial warranty is legally binding on the seller, within the conditions specified in the corresponding warranty declaration and publicity. A warranty certificate based on the commercial warranty must contain reference 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 certificate must keep to a simple and intelligible language.

**Remarks:**

- The warranty period is a limited time period 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 maintains its specific characteristics, as long as the conditions required for the products' transportation, handling, storage and preservation are met.
- 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.

In case of a lack of conformity, consumers have the right to require the seller to repair or replace such defective products, without charge in any case, unless the measure is impossible or disproportionate.

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 regarding the legal conformity guarantee is entailed if the product's lack of conformity appears within two years as of 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 of 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 the Product Guarantees Law, are null and void, and therefore not binding on the consumer.

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

Such products and services may be traded if accompanied by a conformity statement drafted by the producer, supplier or their authorized representatives, which are legal entities headquartered in Romania.

## **7. Unfair Clauses. Unusual 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 need any professional training to be understood by the

signatory parties. In the event of any doubt referring to any clause of the agreement, the interpretation of such a clause is made in favor of the consumer.

### **7.1. Unfair clauses**

Unfair clauses are those contractual clauses which have not been individually negotiated by the parties and, contrary to the requirement of good faith, cause a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.

The law provides for a non-exhaustive list of clauses that are deemed to be unfair, among which the noteworthy clauses are those that:

- (i) entitle the seller to unilaterally ascertain the conformity with the contractual clauses of the products and services provided;
- (ii) require any consumer who fails to fulfill his obligation to pay a disproportionately high sum in compensation;
- (iii) authorize the seller to unilaterally terminate the agreement without providing for the same opportunity of the consumer.

Clauses found unfair by a court are null and void. Fines may also be applied to traders using such clauses.

### **7.2. Unusual clauses**

The amendments brought to the Civil Code further protect the consumer by providing that standard clauses which refer to certain rights of particular relevance for consumer contracts are unusual clauses, and they are not binding unless the consumer expressly gives his consent in writing. Such clauses concern:

- (i) the right to unilaterally terminate the contract;
- (ii) the right to suspend the performance of the obligations under the contract;
- (iii) the waiver of rights stipulated by the law for the benefit of the consumer;
- (iv) the limitation of the right to invoke procedural defenses;
- (v) the automatic renewal of the contract;
- (vi) the governing law and arbitration clauses.

A contractual clause is regarded as not individually negotiated 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 pre-formulated standard contracts. It is important to highlight that if the trader alleges that the consumer agreed to standard clauses being part of the contract, he also bears the burden of proving such allegations.

## **8. Unfair, Misleading and Aggressive Commercial Practices**

Enacted in late 2007, the Unfair Commercial Practices Law established a landmark in consumer protection regulations in as much as it regulated for the first time in Romania three concepts of fundamental importance: unfair commercial practices, misleading commercial practices and aggressive commercial practices.



### **8.1. Unfair Commercial Practices**

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

### **8.2. Misleading Commercial Practices**

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

The law under discussion also qualifies as a deceiving practice any trading activity, including comparative advertising, which creates confusion for the consumer in respect to the product, the trademark, the name or any other distinctive signs of another trader.

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

### **8.3. Aggressive Commercial Practices**

Pursuant to the provisions of Article 8 of the Unfair 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 average 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 forces or is able to force the consumer to take the decision to purchase a product or service, a decision that otherwise he would not have taken.

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

## **9. Organizations responsible for protecting consumers' rights**

### **9.1. National Authority for Consumers' Protection ("NACP")**

Pursuant to GD No. 700/2012, the NACP is the specialized central public administration body in this matter, subordinated to the Romanian Government under the coordination of the Ministry for Economy, Trade and Business Environment and has, inter alia, the following supervision and control powers:

- (i) to elaborate in cooperation with other competent public administrative bodies and non-governmental organizations the national strategy for consumer protection and harmonize such a strategy with the EU consumer protection strategy;

- (ii) to align the local legal framework with the EU legal framework in the field of consumer protection;
- (iii) to submit to the Government for approval and to endorse enactments in the various fields relating to consumer protection;
- (iv) to run surveys, tests and researches on product and services quality and inform the public on its findings;
- (v) to permanently inform consumers on dangerous products that might harm their health and safety or which may affect their economic interests;
- (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 the 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 the performance of the analyses, expertise, laboratory certificates, authorizations, consultancy, training courses or other services provided for by the law;
- (x) to inform consumers of their rights;
- (xi) to offer specialized guidance to traders in the field of consumer protection;
- (xii) to initiate legal proceedings regarding the cessation of incorrect commercial practices.

## **9.2. Consumers' Protection Associations ("CPA")**

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

- (i) receive logistic support and funding from local and central public administration authorities, in order to achieve their objectives;
- (ii) inform the competent authorities of the existence on the market of certain products that do not comply with the legal standards or endanger consumer life, health or personal safety and with regard to abusive clauses and unfair commercial practices;
- (iii) file legal action to safeguard the rights and legitimate interests of their members;
- (iv) inform the public through mass-media of functional defects of products and services, as well as about their harmful effects to consumers.

### **9.3. Consumers' Protection Consulting Councils ("CPCC")**

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

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

The consumers' protection consulting council is made up of:

- (i) representatives of all public administration authorities with general or specific competence in the consumer protection domain, and having set up organizing structures at the respective level;
- (ii) Prefect or Mayor, as the case may be, or their representatives;
- (iii) representatives of the consumers' protection associations;
- (iv) as the case may be, representatives of other organizations.

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