

Particularities of the consumers' right to information in electronic commerce

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Abstract

An individual's right to information is a fundamental right, guaranteed and protected by effective legal means. At the same time, since it is a relative right, it is likely to be limited by explicit legal regulations, in certain properly determined circumstances. The guarantee and protection of the right to information is a responsibility of authorities, who should facilitate an individual's access to information, in more and more economic and social areas, where persons have a proven interest. In this context, it can be seen that a growing number of legislative acts in specific fields stipulate the obligation to automatically provide certain information or make it available to persons, thus effectively achieving the right to information, correlated to the obligation to inform, incumbent not only on authorities, but on business operators as well, in more and more cases. Information is important in terms of consumer rights, with a view to both protecting their economic interests, and defending their individual or collective health and safety. Certain regulations in terms of consumer rights protection refer to the defence of collective social values and public interests. The study will deal with how the consumer is protected and informed on certain acts and facts of trade, that might put him/her in vulnerable situations.

Keywords: right to information, consumer protection, administrative authorities, electronic trade, obligation to inform.

JEL Classification: K10, K23

1. General considerations

An individual needs information from the most diverse areas, both for social integration, and for a harmonious development and active participation in community life. Article 10 of the European Convention on Human Rights² guarantees the freedom of expression and the right to information and sets the general framework for their limitation. The consumers' rights to information is integrated in the wider framework of consumer protection, dealing with various economic fields and commercial markets.

In 2005, the European Commission drew up a notice on consumer protection in the European Union³ synthesizing ten basic principles of EU legislation: a consumer may buy what s/he wants, where s/he wants; if an item does not work, it

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² Article 10 - Freedom of expression "1. "Everyone has the right to freedom of expression. his right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers (...)"

³ "La protection des consommateurs dans l'Union européenne" http://www.cantal.fr/_fichiers/voscotes/1406711149_La-protection-des-consommateurs-dans-l-ue.pdf, consulted on 5.04.2018.

should be returned; high safety standards for food and commodities; you find out what you eat; contracts must be fair to consumers; consumers may sometimes change their will; facilitating price comparison; consumers should not be misled; protection during holidays; effective ways of appeal for cross-border litigations.

Article 38 of the Charter of Fundamental Rights of the European Union⁴ - Consumer Protection - stipulates that “Union policies shall ensure a high level of consumer protection”. “In time, consumer protection policy has become one of the most transversal policies of the EU, covering product safety, digital market, financial services, food safety and labelling, energy, travel and transport.”⁵

Consumer protection has been established as an objective of the European Union by Article 169 TFEU⁶ (ex Article 153 TEC), which aims at promoting consumers’ rights to “information, education and to organise themselves in order to safeguard their interests”, as well as “protecting the health, safety and economic interests of consumers”. The focus on right to information in terms of consumers of goods or services falls within the wider category of guaranteeing the citizens’ right to information, with a view to providing the information needed to take part in social life and make informed decisions.

The Center for Financial Inclusion (CFI) has drawn up a leaflet⁷ informing consumers on their rights and duties. Thus, consumers are entitled to be treated respectfully, to be listened, to confidentiality, to choosing what product or service to use, to timely receiving clear and reliable information. At the same time, consumers have the duty to treat others respectfully, to assess the costs of a product, to comply with the terms and conditions of the chosen product, to timely provide reliable information, to protect the sensitive and personal data of others. I would now add that, practically, consumers not only are entitled to be informed, but they also have the obligation to inform themselves, as a means of self-protection and so as to make informed decisions on the products or services they purchase.

Efforts for increasing consumers’ protection and information must be joint, from both public authorities and consumers. The role of national administrative authorities is essential in protecting the consumers’ interests.

For Romania, the National Authority for Consumer Protection⁸ is the public institution, a specialized body of central public administration, with a legal status,

⁴ The Charter of Fundamental Rights of the European Union, published in the Official Journal C 83/30.03.2010, pp. 389 - 403, republished in the Official Journal C 83/30.03.2010, pp. 389-403.

⁵ Valant J., “*Consumer protection in the EU*”, EPRS | European Parliamentary Research Service, September 2015 – PE 565.904 [http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS_IDA\(2015\)565904_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS_IDA(2015)565904_EN.pdf), consulted on 5.04.2018.

⁶ Consolidated version of the Treaty on the Functioning of the European Union – TFEU – published in the Official Journal C 326 of 26.10.2012, pp. 47-390.

⁷ “*Les droits et devoirs du consommateur*”, <https://centerforfinancialinclusionblog.files.wordpress.com/2012/04/les-droits-et-devoirs-du-consommateur.pdf>, consulted on 5.04.2018.

⁸ Based on Government Decision no. 700/2012 of 11 July 2012 on the organization and operation of the National Authority for Consumer Protection, published in the Official Gazette of Romania, Part I, issue 491 of 18 July 2012, as subsequently amended and supplemented.

that coordinates and delivers the government's strategy and policy in the field of consumer protection.

2. European Union policies on consumer protection

The European Commission analysed EU policies on consumer protection and identified three drawbacks, in terms of information, implementation and lawmaking, as weaknesses of such policies. In terms of information, people are frequently thought to be insufficiently informed or aware of the rights they have and not to know where to look for information or help. On the other hand, authorities fail to properly understand rules and their actual implementation.⁹ The European Consumer Agenda and the Multiannual Consumer Programme for the years 2014-2020 were adopted with a view to improving consumer protection.

The European Consumer Agenda¹⁰ finds that a paradox has occurred in terms of consumer information, i.e., even though consumers have a lot of information at their disposal, this is not necessarily helpful in making a decision ("Excess of information - deficit of knowledge"). Consequently, a key objective is to reinforce consumers' knowledge, and the Commission has set two specific objectives to this purpose: "improving information and raising awareness of consumer rights and interests among both consumers and traders" and "building knowledge and capacity for more effective consumer participation in the market".

The Multiannual Consumer Programme for the years 2014-2020¹¹ also sets the following specific objective (objective II): "Consumer information and education, and support to consumer organisations: to improve consumers' education, information and awareness of their rights, to develop the evidence base for consumer policy and to provide support to consumer organisations, including taking into account the specific needs of vulnerable consumers." Four eligible actions were identified for the achievement of this objective, with a focus on access to information, transparency and good practice exchange, "enhancing consumer education as a life-long process".

⁹ European Commission, Commission Staff Working Paper – "*The Single Market through the lens of the people: A snapshot of citizens' and businesses' 20 main concerns*", Brussels, 16.8.2011, SEC(2011) 1003 final, http://ec.europa.eu/internal_market/strategy/docs/20concerns/SEC2011_1003_en.pdf, p. 3, consulted on 5.04.2018.

¹⁰ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions - *A European Consumer Agenda - Boosting confidence and growth*, Brussels, 22.5.2012, COM(2012) 225 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012DC0225&from=EN>, consulted on 5.04.2018.

¹¹ Regulation (EU) No 254/2014 of the European Parliament and of the Council of 26 February 2014 on a multiannual consumer programme for the years 2014-2020 and repealing Decision No 1926/2006/EC, published in Official Journal L 84 of 20 March 2014, pp. 42-56, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0254&from=RO>, consulted on 5.04.2018.

I would like to add that, though European legislation refers to “vulnerable consumers”, the term is not explicitly defined. In Professor Chazal’s view¹², “vulnerable” refers to both a physical issue (a consumer is affected by the use of a faulty product) and a moral issue (financial damage). Consumers lie on a lower level than professionals (providers of goods and services) from two points of view: economically and informationally¹³, hence, the explicit need for protection. From the point of view of the study, I would focus on informational vulnerability, as a consumer is disadvantaged compared to the professionals, who have technical, legal information, etc.

A consumer may become a victim of the competitive market, which is why they should be protected by specific rules, applicable to the entire market, without interfering with fair competition. “Freedom is the guarantor of individuals’ welfare, and a state has a single mission, a negative one, i.e. to refrain from interfering with the natural market functioning process”.¹⁴

Thus, lawmakers should strike a balance between consumer rights and professional rights, which is more difficult¹⁵, since regulations apply to contracts, where the parties’ agreement of will is actually prevalent. However, this agreement of will must be based on accurate, clear and helpful information, and consumer protection-specific regulations do not usually affect the general framework applicable to contracts.

The business world uses the Web for promoting products, but also for competitiveness, by deliberate responsibility or de-responsibility of the organisations towards the consumers and their rights¹⁶.

Commerce is defined in doctrine¹⁷ as the process flow associated with a commercial relationship or transaction, including activities such as purchasing, marketing, sales and customer support. E-commerce is this same process enabled by the use of communications and information technology. It is the process of trading goods, information or services via computer networks including the internet.

¹² Chazal J.P., “*Vulnerabilité et droit de la consommation*”, Colloque sur la vulnérabilité et le droit, organisé par l’Université P. Mendès-France, Grenoble II, le 23 mars 2000, p. 1, <https://spire.sciencespo.fr/hdl:/2441/3cr7jj61bs68cvg998ecligkj/resources/chazal-vulnerabilite-droit-conso-1.pdf>, consulted on 5.04.2018.

¹³ Chazal J. P., *op.cit.*, p. 4.

¹⁴ Rigal M., *La protection du consommateur par le droit de la concurrence*, <https://cdcmontpellier.files.wordpress.com/2015/01/rigal-marie-la-protection-du-consommateur-par-le-droit-de-la-concurrence.pdf>, consulted on 5.04.2018.

¹⁵ Pichonnaz P., *La protection du consommateur en droit des contrats: le difficile équilibre entre cohérence du système contractuel et régime particulier*, http://www.unifr.ch/ius/assets/files/chaire/CH_Pichonnaz/files/2006%20-%20La%20protection%20du%20consommateur.pdf, consulted on 5.04.2018.

¹⁶ Ioan I. Gâf-Deac, Alexandra Ene, Ioana Andreea Marinescu, Monica Cristina Valeca, Emilia Visileanu, *The management of consumers’ rights protection in computerised marketing in textiles and leather industry*, „Industria Textila” vol. 68, issue 2/2017, p. 139.

¹⁷ See Eda Acar, Pelin Ofluoğlu, Seher Kanat, Zümüt Bahadır Ünal, Turan Atılğan, *Analyzing buying behavior of plus-size clothing consumers in ecommerce*, „Industria Textila” vol. 68, issue 5/2017, p. 396.

As for the digital market, the decision makers’ focus on consumer protection and information is enhanced by the constant and quick evolution of technology, which provides consumers with the possibility of accessing a more and more extended market. Directive 2011/83/EU¹⁸ aims at setting a standard legislative framework “for the common aspects of distance and off-premises contracts”, applicable to all Member States. For an easier understanding of the protection provided by the Directive, the Directorate-General for Internal Policies of the European Parliament drew up a leaflet¹⁹ – summary of the provisions of Directive 2011/83/EU.

The directive aims at adding to information-related requirements in Directive 2000/31/EC²⁰ and harmonizing the information the consumer should receive, by setting concrete rules to this purpose. There is an essential requirement for the professional to provide the consumer with “clear and comprehensible information before the consumer is bound by a contract”. Moreover, the Directive stipulates that the information to be provided to the consumer should “be mandatory and should not be altered”.

New consumer rights applicable across the EU

Contracts concluded after 13 June 2014 should comply with the Consumer Rights Directive adopted by an overwhelming majority in the European Parliament on 23 June 2013. This Directive strengthens consumer rights introducing e.g. a longer cooling off period for distance and off-premises contracts, introducing greater price transparency, prohibiting pre-ticked boxes and clarifying information on digital content, in order to boost the confidence of European consumers.

VOTING OF THE DIRECTIVE in the EP

For	16
Against	21
Abstentions	615

TIME and PROCEDURE

14 Calendar days

For internet, phone, mail, order books, as well as for sales outside shops, including solicited visits and online auctions from professional seller.

FROM THE DAY OF RECEIPT

Consumer has, in general, 14 calendar days to withdraw from the contract for any reason without any need to justify the withdrawal.

FROM THE DAY OF WITHDRAWAL

From the day of withdrawal, the consumer has 14 calendar days to send the goods back to the trader.

FROM THE DAY OF RECEIVING THE INFORMATION ABOUT WITHDRAWAL

14 Calendar days

From the day of receiving the information about withdrawal, the trader has 14 calendar days to refund the consumer.

Greater price transparency

Traders have to disclose the total cost of the product or service, as well as any extra fees. Consumers will not have to pay charges or other costs if they have not been properly informed before they placed an order.

No pre-ticked boxes

Pre-ticked boxes that consumers need to untick if they do not want to purchase additional services are banned across the European Union.

No cost traps

Some traders trick consumers into paying for “free” services, such as homeoscopes or receipts. From now on, consumers must explicitly confirm that they understand that they have to pay a price.

No surcharges

For the use of credit cards and hotlines. Traders cannot charge consumers for paying by credit card beyond the actual cost of offering such means of payment. Traders operating consumer hotlines resolving contract issues may charge only basic telephone rates for the telephone calls.

Clearer information

on digital content, including information about compatibility with hardware and software, and the application of technical protection measures (such as limiting the right to make copies of the content).

The Infographic presents selected elements of the Consumer Rights Directive. For a complete legal text, containing precise delineation of the scope and rights as well as exceptions, please refer <http://ec.europa.eu/consumers/odr/>.

As of 13 June 2014, Member States must apply the national laws implementing the Consumer Rights Directive. Policy Department A of the European Parliament produced the Infographic to review the dimensions of the most important adjustments introduced by the Directive, which will apply to contracts concluded after 13 June 2014. It is based on publicly available information and is provided for information purposes only. The overview may be updated if needed to take further developments into account.

NOTE

Policy Department A: Economy and Society Policy
To contact the Policy Department A or to submit the feedback, please write to: Policy-Department-A@ec.europa.eu
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Chapter II of Directive 2011/83/EU stipulates requirements on consumer information for contracts other than distance or off-premises contracts, while

¹⁸ Directive 2011/83/EU of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (Text with EEA relevance), published in Official Journal L 304 of 22 November 2011, pp. 64-88

¹⁹ [http://www.europarl.europa.eu/RegData/etudes/divers/join/2014/518771/IPOL-IMCO_DV\(2014\)518771_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/divers/join/2014/518771/IPOL-IMCO_DV(2014)518771_EN.pdf), consulted on 5.04.2018.

²⁰ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) – JO L 178, 17/07/2000 P. 0001 – 0016.

Chapter III regulates on consumer information and the right of withdrawal for distance and off-premises contracts, respectively information requirements and formal requirements for distance and off-premises contracts.

The two chapters include a range of shared compulsory information, such as: the main characteristics of the goods or services; the identity and address of the trader; the total price of the goods or services inclusive of taxes; the arrangements for payment, delivery, performance; a reminder of the existence of a legal guarantee of conformity for goods, the conditions of aftersale customer assistance; the duration of the contract and the conditions for extending or terminating it; technical protection measures for digital content.

A specificity of distance and off-premises contracts is the information requirement on the right of withdrawal, if applicable, the conditions, terms and procedures for exerting such right, the costs of exerting such right (e.g. return costs), as well as information on cases when the right of withdrawal is not stipulated (as per article 16 of the Directive) or, as applicable, the circumstances when a consumer loses his/her right of withdrawal.

The formal requirements of off-premises and distance contracts mainly refer to the trader supplying to the consumer, on paper or on other durable medium or in a suitable way according to the used means of communication, the information set as information requirements by the Directive (stipulated under art. 6 (1)). Another formal condition is for these contracts to have legible, simple and comprehensible information.

We may observe that the provisions of Directive 2011/83/EU only establish information requirements and formal requirements, with no regulation on how to enter, perform and terminate a contract.

3. Transposition of the provisions into Romanian legislation

Law no. 365 of 7 June 2002 on electronic commerce was adopted with a view to transposing into national law the provisions of Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.²¹ The law was subsequently amended and republished, still in order to be aligned to the provisions of Directive 2000/31/EC, by Law no. 121 of 4 May 2006.²² The Romanian Government passed Government Decision no. 1308 of 20 November 2002 on the approval of Methodological Guidelines for the enforcement of Law no. 365/2002 on electronic commerce.²³

²¹ Law no. 365 of 7 June 2002 on electronic commerce, published in the Official Gazette of Romania, Part I, issue 483 of 5 July 2002, republished based on art. II of Law no. 121/2006 on the amendment and supplementation of Law no. 365/2002 on electronic commerce, published in the Official Gazette of Romania, Part I, issue 403 of 10 May 2006.

²² Republished in the Official Gazette of Romania, Part I, issue 959 of 29 November 2006, with renumbering of texts.

²³ Government Decision no. 1308 of 20 November 2002 on the approval of Methodological Guidelines for the enforcement of Law no. 365/2002 on electronic commerce, published in: the Official Gazette of Romania, Part I, issue 877 of 05 December 2002.

Article 5 of Law no. 365/2002 stipulates the information the service provider must supply to recipients and public authorities, and the basic requirement is that access to such information should be “easy, direct, permanent and free of charge”. Moreover, as per article 6, commercial communication must meet certain requirements; the fundamental requirement is the recipient’s prior consent to receive such information.

As for contracts entered by electronic means, article 8 of Law no. 365/2002 stipulates the obligation to supply information before the recipient expresses his/her agreement of will on the acceptance of the offer, and such information should be expressed “clearly, unequivocally and in an accessible language”.

As for Directive 2011/83/EU, this should have been transposed into national legislation by 13 December 2013; however, Romanian authorities failed to submit transposition measures to the European Commission, which resulted in the sending of a letter of formal notice, with the possibility to launch an infringement procedure against Romania, for the failure to implement the provisions of the EU directive into its domestic law. Emergency Ordinance no. 34 of 4 June 2014 on consumer rights in contracts entered with professionals, as well as on the amendment and supplementation of legislative acts, was adopted with a view to avoiding a sanction to Romania.²⁴ The ordinance translates into Romanian law the provisions of chapters II and III of Directive 2011/83/EU (analysed in the previous section) and aligns the relevant regulations to the provisions of this Directive, mentioning that, in terms of consumer information, the requirements of this ordinance are additional to and, in case of contradiction, prevail upon the information requirements included in Government Emergency Ordinance no. 49/2009²⁵ and Law no. 365/2002 on electronic commerce, republished, as subsequently amended.

Major amendments are introduced by Government Emergency Ordinance no. 34/2014 and Government Emergency Ordinance no. 111/2011²⁶, dealing with requirements on user information and information on their right of withdrawal.

As for the determination of national administrative authorities competent for the implementation of provisions transposed into Romanian legislation, we may see that article 17 of Law no. 365/2002 generically refers to the “Authority regulating on communication and information technology, hereinafter referred to as the Authority”, as such an authority was not yet established as of that date.

²⁴ Emergency Ordinance no. 34 of 4 June 2014 on consumer rights in contracts entered with professionals, as well as on the amendment and supplementation of legislative acts, published in: the Official Gazette of Romania, Part I, issue 427 of 11 June 2014.

²⁵ Emergency Ordinance no. 49 of 20 May 2009 on the freedom of establishment of service providers and the freedom to provide services in Romania, published in the Official Gazette of Romania, Part I, issue 366 of 1 June 2009, approved as amended and supplemented by Law no. 68/2010, published in the Official Gazette of Romania, Part I, issue 256 of 20 April 2010.

²⁶ Government Emergency Ordinance no. 111/2011 on electronic communication, published in the Official Gazette of Romania, Part I, issue 925 of 27 December 2011, approved as amended and supplemented by Law no. 140/2012, published in the Official Gazette of Romania, Part I, issue 505 of 23 July 2012.

However, the lawmaker invests this authority with the competence to supervise and control the providers' compliance with their obligations, as well as to establish infringements and apply sanctions. Likewise, the authority is granted the right to ask for information from providers, with a view to exerting its attributions, and its role is established in the cooperation with similar authorities from other European Union Member States, with the European Commission. At the same time, the authority has the role to inform providers and users on law enforcement-related issues. As per article 17 (13), the attributions of the authority (until its establishment) are covered by the Ministry of Communication and Information Technology.

The "authority" referred to in Law no. 365/2002 was to be set up based on the provisions of Directive 2002/21/EC²⁷; however, Romanian authorities failed to transpose the provisions of the Directive into national law, which is why the European Commission sent a letter of formal notice on 29 January 2009 (case 2008/2.366). In June 2009, a Government Emergency Ordinance established the National Authority for Administration and Regulation in Communications (ANCOM).²⁸ Therefore, the provisions of art. 17 of Law 365/2002 refer to ANCOM, which is granted the listed attributions.

Article 26 of the Government Emergency Ordinance no. 34/2014 stipulates an information duty for the National Authority for Consumer Protection, which should take the required action to inform consumers and professionals on the provisions of this emergency ordinance.

As for the administrative authorities with competence in terms of the compliance with ordinance provisions, the lawmaker stipulated competences both for the National Authority for Consumer Protection (ANPC), and for the National Authority for Administration and Regulation in Communications (ANCOM); the notices would be addressed depending on the material competence of each authority, and the competence to apply sanctions would be delimited as per art. 28 of Government Emergency Ordinance no. 34/2014.

Likewise, ANPC is designated to relate with the European Commission, which it should inform on the adoption or maintenance of national provisions that are stricter than those under Directive 93/13/EEC²⁹ or Directive 1999/44/EC³⁰, as well as subsequent amendments.

²⁷ Directive 2002/21/EC of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) published in: Official Journal L 108 of 24 April 2002, pp. 33-50.

²⁸ Established through Government Emergency Ordinance no. 22/2009, published in the Official Gazette of Romania, Part I, issue 174 of 19 March 2009, approved by Law no. 113/2010, published in the Official Gazette of Romania, Part I, issue 416 of 22 June 2010.

²⁹ Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, published in: Official Journal L 95 of 21 April 1993, pp. 29-34.

³⁰ Directive 1999/44/EC of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, published in Official Journal L 171 of 7 July 1999, pp. 12-16.

At the same time, ANCOM has the possibility to request information for providers with a view to exerting its attributions (e.g. to check the professionals' compliance with their obligations, to solve litigations, etc.).

4. Particularities on the burden of proof

According to the provisions of article 249 of Law no. 134/2010³¹, the burden of proof falls upon those making a claim during a trial, unless explicitly provided by the law. Thus, in terms of common law, the burden of proof usually lies with the claimant, who must prove the submitted claim.

In terms of consumer information, we find a particular situation of reversal of the burden of proof, i.e. the law explicitly stipulates that the provider must prove to having provided the information specifically requested by the law. Article 6 (9) of Directive 2011/83/EU stipulates that "as regards compliance with the information requirements laid down in this Chapter [i.e. in terms of distance and off-premises contracts], the burden of proof shall be on the trader".

The provision is also found in Romanian law, being reproduced by article 5 of Government Emergency Ordinance no. 34/2014, stipulating that the burden of proof for the compliance with information requirements for other contracts than off-premises and distance contracts falls upon the professional. Likewise, under article 6 (10), the ordinance stipulates that, in terms of information requirements for distance and off-premises contracts as well, the burden of proof lies with the professional again.

Government Emergency Ordinance no. 111/2011 includes similar provisions under article 53 (6), i.e. the burden of proof falls upon the professional, who must prove to having provided clear and intelligible information to the end user, as per art. 53 (1), before a distance or an off-premises contract or any similar offer becomes enforceable on the end user.

Law no. 365/2002 also includes specific guidelines on the burden of proof in the case of litigations on the supply of informational society services. Article 30 stipulates the service provider's obligation to prove that they have met the obligations stipulated under articles 5, 6, 8 and 9 (i.e. obligations regarding general information, commercial communications, recipient's information on contracts entered by electronic means, entering contracts by electronic means), regarding the consumer.

In my opinion, this reversal of the burden of proof is based on the legal assumption that the user/consumer was entitled to such information and that, if s/he claims it has not been provided to him/her, the professional should prove the compliance with his/her legal duty.

Even though the burden of proof falls upon the professional (trader or service provider), in terms of consumer information, the burden of proof on the exercise of the right of withdrawal by the established deadline remains an

³¹ Law no. 134/2010 of 1 July 2010 on the Civil Procedure Code, republished in the Official Gazette of Romania, Part I, issue 247 of 10 April 2015.

obligation of the consumer. This is explicitly stipulated in article 11 (4) of Directive 2011/83/EU, as well as reproduced by article 11 (4) of Government Emergency Ordinance no. 34/2014 and by article 58 (4) of Government Emergency Ordinance no. 111/2011. In my opinion, it is justified to maintain the burden of proof with the consumer, as s/he is the one using a right granted by the law (to withdraw from a contract), and it is only natural for him/her to prove that s/he has exercised this right in good faith, by the legal deadline.

5. Conclusions

Analysing the transposition into national legislation of consumer protection regulations in the field of electronic commerce, we may see that provisions, especially in terms of consumer information, have been taken up by Romanian legislation; however, in at least two relevant situations (Directive 2011/83/EU and Directive 2002/21/EC), the EU law was transposed with delay.

We may say that legal provisions on the topic are not clear enough for the consumer (and clarity is referred to in this law), who has to face a wide amount of legislation, with references from one regulation to another, emergency ordinances that have been subject to amendments in their adoption laws and other successive amendments, with potential conflicts between the regulations and stipulating that certain information-related requirements prevail.

In my opinion, a more careful analysis of the relevant laws should be drawn up and a leaner, more user-friendly regulatory framework should be designed. As outlined, a major role is played by administrative authorities, whose incorporation documents stipulate their capacity to ensure the harmonisation of national legislation and EU regulations, as well as guarantee consumer information. In my view, they should be in charge with drawing up leaner, clearer and user-friendly draft regulations, even with drawing up a Consumer Code, including legislation on consumer rights. This could result in the achievement of the priority goal of consumer protection and information.

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