

PROMOTING THE INTERESTS OF CONSUMERS AND USERS IN THE SINGLE MARKET

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As globalization provides consumers and users with a larger choice and new uncertainties as well, the need arises for new global protection. European standardization process is more and more a must to the Single Market, a key element to an actual „commercial citizenship” inside the European Union. It is necessary to ensure strengthened and increased efficiency of international collaboration between private and public actors, sustainable supply of renewable energy at best prices and a producer-trader-consumer connection which should allow consumers and users to enjoy rights and aspirations, in full respect of competition requirements. Single Market cohesion needs a competition policy throughout the European Union which should ensure the existence of strong companies as necessary actors within the competition on international markets.

Key words: Globalization, European standardization, consumers, cohesion of the European Single Market, competition policy, Romanian market

1. Introduction. Conceptual Framework

Globalization provides consumers and users a larger choice and new uncertainties as well, which must be considered from the point of view of regulation, as new protection is needed. Consumers and users must be represented at all the decisional levels and enjoy global forums for debate, in order to ensure their aspirations' fulfilment.

It is equally important to provide European consumers and economic agents, on medium term, a sustainable supply of energy from fossil sources, at best prices, while on long term it is desirable to increase the weight of renewable energy, for consumer protection and environmental protection are closely interrelated.

The most important market segment, that which directs the economic agents' future activity, is represented by actual/potential final consumers or users. These are the ones who, through their choices, configure the sale development.

Consumer is anyone who purchases for their own use, goods or services which are offered within the free competitive market. The idea of consumer usually refers to individual persons, although institutions or human groups can also be 'consumers'. As for individuals, we have to remark that, in classical economics, decisions are made at group level, on the base of compromises between individual aspirations of family members.

Romanian law for consumer protection reflects the collective feature of *consumer* defined as „natural person or group of natural persons (established as associations), who purchase, achieve or consume goods or services, outside their professional activity”. Therefore, the notion of *consumer* is perceived in a larger context, as part of a community and it is the collective feature that brings necessity of a policy of consumer protection, as a result of collective interests.

Population as a consumer-whole is the main target of the largest part of the produced and imported goods and it is precisely population which closes a cycle of the economic process so that any disorder in this sector could have the utmost inauspicious effects upon an economy.

The marketing science distinguishes between *consumer* and *client*: a consumer who is satisfied with the purchased goods/services becomes a client, and the steadily satisfied client becomes a *loyal client*. The client belongs to a provider-known segment of consumers who are characterized by periodicity in purchase or consumption, hence showing a certain loyalty towards the company or brand, or service type. So not all consumers are clients too, for the client is that one who starts a lasting relation with the provider they has chosen. The clientele has a vital importance to the economic agent's success.

In quite many cases, it is not the actual consumer who decides upon the choice of goods / services which they consume as a matter of fact, but an intermediary. For instance, pharmaceutical products address ill persons, but their choice is made by doctors. And doctor's choice depends upon pharmacist's offer. Within the Romanian post-1990 market, pharmacists opted mainly for imported products, much more expensive than the domestic ones, hence more profitable to the seller, and thus domestic drug production was discouraged and also an already-disadvantaged category of consumers was deprived of protection.

2. Directions of protection

Regulation through norms of consumer protection implicitly acknowledges two functional shortenings of competitive market¹⁴⁴:

- the lacking effect of back regulation (self-regulation) within the seller-buyer relation (non-observance of provided good/service quality);
- unfair relation between the producing entity and the individual consumer.

Self-regulation ought to allow efficient recovery of the loss that consumer has been subjected to through non-observance of a certain good/service quality by the provider, including in the damage the time they have assigned to the exchanging act, which did not end as the consumer had wanted. The provider has a definite advantage over the individual consumer that they use in a frequent and unauthorized way, in an uneven confrontation of forces. On the other hand, consumer is not able to gather, process and select in time the whole available information on goods/services existing within the market and necessary to their own consumption, so that their decisions will be in a large extent aleatory and rather imposed by outer restrictions than own aspirations.

The legal norm establishes four categories of fundamental rights for consumers:

1. **protection against the risk of purchasing a good or being provided a service** that could harm their life, health, security, or affect their rights and vested interests;
2. **complete, correct and precise information** upon essential characteristics of goods and services, so that the purchasing decision they adopt could be in accordance with their needs;
3. **market availability** which provides them with a varied range of high quality goods and services;
4. **compensation for losses caused by unsuitable quality** of goods and services, by legal means.

Consumer protection also involves the action of the State and respectively the Court of Justice at the European Union's level, being a peculiarly complex process. Every new regulation is perceived by producers as coercion and will obviously cause their countermeasure within exchange processes on competitive markets.

3. Cheating advertising and aggressive selling practices

On December 12, 2007, new provisions came into force throughout the EU, as to fight cheating advertising and aggressive selling practices – including prohibition of false offers, so-called “free”, as well as advertising released on Internet and based on children “*harassing ability*” (that contains straight urges to purchase for children).

Directive 2005/29/EC¹⁴⁵ of the European Parliament and of the Council, of 11 May 2005¹⁴⁶, on unfair commercial practices of enterprises within internal market, towards consumers, is meant to reinforce the legal framework already in force, with respect to cheating advertising, and introduces new countermeasures for aggressive selling practices, like harassment, constraint and unjustified influence.

Adoption of this Directive is mainly meant to increase trust of consumers – natural and legal bodies – in Single Market, so that they should have maximum benefits of enjoying goods and services in other

¹⁴⁴ Vasile Dogaru, *Economia comerțului*, Eurostampa Publishing House, Timișoara 2007, pp. 227-235.

¹⁴⁵ Official Journal n° L 149 from 11/06/2005, p. 0022 – 0039.

¹⁴⁶ <http://eurojournal.eu/>, April 2008.

countries than their residing. At the time of this Directive's coming into force, only 14 out of the 27 EU's Member States had transposed it into their national legislation, and the infringement procedure was initiated by the European Commission for the remaining 13.

The black list of forbidden practices set by this Directive included, among other, 12 of the most frequent abusive practices which are used in relation to consumers. Unfair practices misinform consumers, thus harming competitive markets. As the European Single Market does not admit traders who put pressure on consumers, intimidating or misleading them, the European Union decided to serve as an example: provisions referring to forced sale which misleads consumers range among the most severe ones in the world.¹⁴⁷

The new Directive establishes 4 essential elements:

- comprehensive general clause which defines forbidden unfair commercial practices;
- detailed definition of aggressive practices (actions and omissions) and those meant to mislead the consumer – these are the main two categories of unfair practices;
- institution of protecting means for vulnerable consumers, through the adoption of provisions meant to prevent exploitation which consumers might be exposed to;
- black list, thoroughly describing the forbidden practices in all circumstances.

Over 30 practices are black listed as being in all circumstances considered unfair, and 12 among them are underlined for damages they might cause to consumers.

- 1) **„Lure” advertising**: the action of making the consumer buy at a very low price, from a company which advertise some product without having a reasonable stock of it.
- 2) **So-called „free” offers**: the action of describing a product as „*gratis*”, „*free*”, „*without charge*” or similar, when the consumer still have to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.
- 3) **Actions of direct exhortation to children**, or persuading their parents, to buy advertised products for them. TV direct exhortation to children is prohibited. The black list also applies this prohibition to the whole media, the Internet included.
- 4) **False statements** on beneficial properties of a product.
- 5) **„Broadcast advertising”**: using editorial content in the media to promote a product where a trader has paid for promotion without making it identifiable to the consumer.
- 6) **Pyramid schemes of product promotion**: in such cases, compensation is derived primarily from bringing new participants in the scheme rather than from sale or consumption of products.
- 7) **Prizes**: inducing to the consumer's mind a false impression of winning a prize while it does not exist or its delivery is conditioned by fulfilling a payment or other task.
- 8) **Misleading the consumers** with respect to the rights they enjoy – in this case, consumer's rights ensured through appropriate laws are presented as a characteristic element of the commercial offer.
- 9) **Limited offers**: actions of abusive statement on some product availability, depriving the consumer of the reasonable possibility of informed choice.
- 10) **Operating language of after-sale service**: it is prohibited to use a single language which consumers are not familiar with, if full information was not provided before transaction.
- 11) **Products which the consumer has not ordered**: this category includes the claiming of immediate or gradual payment of supplied products which were not ordered by the consumer.
- 12) **Service availability throughout Europe**: creating the false impression that after-sale service of a product is available in other Member State than the one in which the product is sold.

4. A greater flexibility of self-regulation within competitive market

In order to relieve the European Court of Justice and Court of First Instance of a significant share of the multitude of European law infringement cases, the Commission had the initiative of establishing a “peace

¹⁴⁷ Meglena Kuneva, European Commissioner for consumer protection, <http://eurojournal.eu>.

panel” at European level. The SOLVIT network was thus established in 2001, by the Commission and the Member States, and in 2002 it started functioning with the aim to solve problems which citizens and economic agents are faced with as a result of non-observance of Community Law for the internal market. All the Member States, plus Norway, Iceland and Liechtenstein, set SOLVIT centers, in most cases inside the Foreign Affairs Ministry or the Ministry of Economy. Those centers directly cooperate through an online database, in order to find out actual functional solutions to the problems pointed out by citizens and economic agents.

The maximum deadline for complaint solving is of 10 weeks. Both SOLVIT centers will act together in the attempt of finding out a solution to the specific problem and the complainant will be kept informed on the case development and the suggested solution by their domestic SOLVIT center. But if a complaint remains unsolved or the complainant considers the suggested solution unacceptable, they can take legal action in a national court or can put forward a petition to the European Commission. Romania ranges among the Member States with SOLVIT centers in urgent need of more staff or more time to be assigned by the existing staff.

An example of SOLVIT solution

A Finnish company asked permission for launching food supplements within the Czech Republic market. Czech authorities objected that according to their national law, the respective products exceeded the permitted amounts of B vitamin and could have been harmful to the consumers if traded as food supplements. Even after one year of negotiations, the authorities went on considering those imported products as pharmaceutical items. However, SOLVIT managed to persuade Czech authorities that those products were not pharmaceutical and could be traded as food supplements if suitably labelled.

One more frequent problem is the food security. The Swedish Institute of European Studies (SIEPS) issued a report entitled "Transformation of Community Regulation on Food Security", which analyzes the development of food security within Community Law and shows the contributions of the regulation from 2002. A number of general principles are introduced which henceforth make the public health one of the main elements of European policy on food security.¹⁴⁸

A survey of the European Commission on the rate of economic confidence, issued on 30 April 2008, reveals that the confidence of enterprises management and consumers has clearly decreased. In April, this index fell by 3.8 points in the European Union and by 2.5 points in the euro zone, reaching 98.1, respectively 97.1 points. This is the lowest level since August 2005. This severe decrease affects all sectors and mainly services and retail trade. UK ranges first with 8.9 point decrease. The index of business environment, which calculates the industrialists' confidence, has strongly dropped.¹⁴⁹

5. Romania's Strategy on consumer protection during 2007-2012¹⁵⁰

The European policy on consumer protection follows some fundamental directions:

- Promotion of a vision on consumer protection understood as complex social-economic phenomenon involving systemic integration of consumer interests in all the relevant sectors of the EU;
- Combination of individual and associative self-protection – the surest, most efficient and less expensive way, with direct and indirect protection achieved by every Member State and respectively at the Community level;;
- Even implementation of Community acquis in the specific sector;

According to these directions, the **main strategic targets** were set for the policy on consumer protection over the period 2007-2013:

- **knowledge of consumers and market ;**
- **implementation, monitoring and update;**

¹⁴⁸ Morten P. Broberg, *Transforming the European Community's Regulation of Food Safety*, Report no. 5/April 2008, issued by the Swedish Institute for European Policy Studies, Stockholm, ISSN 1651-8942, ISBN 978-91-86107-01-7 (www.sieps.se).

¹⁴⁹ EUROPEAN COMMISSION, DIRECTORATE-GENERAL FOR ECONOMIC AND FINANCIAL AFFAIRS, *BUSINESS AND CONSUMER SURVEY RESULTS*, April 2008, http://ec.europa.eu/economy_finance/db_indicators/db_indicators8650_en.htm

¹⁵⁰ <http://www.protectia-consumatorilor.ro/strategie.php>

- **better informed and educated consumers.**

The vector-target is to realize a high level of consumer protection understood as defence of consumer fundamental rights: protection of life, health and security; protection of economic interests; ensuring the vital necessities; availability of markets with varied range of products and suitable quality services; safe environment; information; education; association.

The fundamental objectives are major lines of action for building a European-type legislative institutional system which should ensure a higher consumer protection, namely:

- increased capacity of individual self-protection, especially associative, so that it becomes the main way of consumer protection;
- optimization of State activity of direct and indirect protection;

The action lines and principal targets for achievement of fundamental objectives are:

1. Improvement and development of legislative framework for a better operation and conclusion of harmonization with the EU's Law.
2. Development and improvement of the institutional system.
3. Development of consumerism.
4. Improving the activity of consumer information, counselling and education.
5. Carrying out surveys, studies and comparative tests meant to ground the activity of consumer information, counselling and education.

6. Conclusion

European *acquis* in the field of consumer protection includes regulations on protection of both consumers' economic interests and goods' general security. The Member States of the European Union must ensure the *acquis* implementation through devices of solving disagreements, both by lawsuits and other ways including administrative systems like the system of market monitoring and its reinforcement of consumer associations' role.

This horizontal policy has in view the promotion of consumer interests within the internal market and has important consequences on other policies of the EU which include norms on consumers' rights, as for example The Joint Agrarian Policy, environmental protection, transports and energy. The European Council from Copenhagen (1993) acknowledged the importance that harmonizing the legislation with the *acquis* in this sector has for the enlargement process. The general framework for financing Community actions which support consumer protection for 2004-2007 mainly referred to Community actions aiming to protect consumers' health, security and economic interests, as well as actions of consumer information and education.

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