CONSUMER LAW IN ROMANIA; A CONTEMPORARY CREATION

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Prima verba

This doctrinaire endeavor is based on the results of the studies carried out by the author in the period 2002 – 2007, whose object have been the regulations in the domain of the consumer law in Romania, in special relation to the regulations referring to the consumer law.

The landmarks for this mission were the research of the settlements having as object the consumers' protection, edicted in Romania as a consequence of the harmonization of the national legislation with the norms of the European Union, whose State Member Romania became on 1st January 2007. The landmarks have also been the national doctrine and jurisprudence, as well as the research on the experience of the Member States of the European Union, by appealing to their regulations, doctrine and jurisprudence.

The results of the studies have been published in a series of articles, either in the specialized juridical journals from Romania, or in the volumes of some scientific national and international manifestations, and have been put together in two monographs, namely: "*Creditul destinat consumului - Protecţia intereselor economice ale consumatorilor*[ii] *in 2004 and "Protecţia juridică a consumatorilor – Creditul destinat consumului şi domeniile conexe „*[iii] *in 2007*[iv].

The object of this study, substantiated on the research mentioned in the domain of the regulations for the consumers' protection is the synthesis entitled „Consumer Law in Romania; A Contemporary Creation", which we begin by quoting Faulkner: *„I have never known what I believe about a thing until I read what I had written about that thing."*

The edifice of this synthesis concerning the consumer law, a branch set up as a result of edicting the regulations for the consumer law and their confluence is made up of the following questions, which we will try to answer: What are the domains where the consumer law is ensured? What are the categories of juridical means for the consumers' protection set up by the contents of the regulations in the domain? What is the profile and what are the characteristics of this branch of law?

In order to penetrate the atmosphere of the research about the genesis and the evolution of the norms ensuring the consumers' protection we will explore the Greek mythology, which offers models by its characters and plots. Therefore, the ancient Greeks considered Hermes the god of commerce, son of Zeus and of Maia, one of the seven Pleiades, god of craftsmen, inventors but also of .... thieves, of those who cheat and fraud. The dual nature of the „actors" protected by the God Hermes, the ambivalence reunited under the patronage of a single god reflects the ancient Greeks' belief that commercial activity also includes having an illicit nature, that might wrong some of the participants, especially the non-initiated, the credulous, the ignorant. Therefore these will need increased protection! But not only from Gods!

Section I-a Landmarks of the norms for consumers' protection

Subsection 1. Norms having general characters and norms having sectorial character.

The evolution of the regulations between the traders and the consumers as well as placing the consumers in a concrete moment of the development of society, by regulations that aim directly or indirectly at protecting the consumers, was determined both by the stage of the economical development and by the characteristics of the competitive market environment and of the political, respectively social and cultural environment.

The traditional juridical remedies displayed by the civil law and by the commercial law[v]

have proved to be illo *tempore* insufficient and inefficient, facing the accentuation of the lack of balance between traders and consumers, owing to the emphasizing of the competitive means and to the diversification of the bidding methods on the market.

This happens because the relation between the traders and the consumers is „naturally unbalanced"[vi]; the traders hold the position of superiority which is due to the technical knowledge and to the economical and financial capacity, and, in order to re-establish the balance, the juridical protection of the „weaker" contracting party – the consumers have acquired legitimacy which is achieved by edicting of some norms adapted to the specific of some relations.

Ensuring consumers' protection has acquired a communitarian dimension, because one of the main objectives of the European Union is that of achieving a space without internal borders, where the goods, the persons, the capitals and the services may circulate. Its setting up has required the creation of a set of norms and institutions which should have applicability and competences in the Member States, among the adequate adopted measures also being the ones related to the consumers' protection. This cannot be dissociated from the general objectives of creating and operating the unique market, but is an integral part of them. The consumers' protection is a central objective of the policy of the European Union, in order to improve the quality of life for all citizens, to promote the protection of their economic interests, of their health and safety, and in order to achieve them a series of regulations have been adopted at communitarian level.

In Romania, the specific regulations for the consumers' protection are characterized, from the point of view of the chronology of edicting, as well as of the changes occurred in order to acquire the content they have at this date, by a legislative *crescendo*. This was carried out, *de facto*, by adopting, in the period December 1990 – December 2007 a significant number of normative documents which transposed the communautaire *acquis* in the national legislation, the consumers' protection being thus put into value regularly, as a fundamental component of the economic and social environment from Romania[vii].

The framework of the consumer law is made up of normative documents having a character of generality as well as those having a special character[viii]. According to the criteria of the degree of generality of the regulations, they are classified as regulations having a general character and regulations having a sectorial character. Both categories of regulations contain, mainly, norms by which obligations or interdictions are set up for traders and the applicable sanctions are determined. The norms aim both at the stages prior to the formation of the contract between the traders and the consumers, and the formation and execution of the contract as well as the extra contractual relations.

A general view of the regulations of the system reveals that, in chronological succession, norms with a general character have been edicted with priority and subsequently norms having a special character. For these reasons, we will further analyze the means of consumers' protection set up by the norms having a general character and then the sectorial norms the latter ones continuing a broader development of the juridical means of consumers' protection set up by their content, namely of the remedies of pre-contractual, contractual and extra-contractual and of procedural means.

Subsection 2. Defining the notion of „consumer".

A first conceptual clarification is necessary *hic et nunc* - determination of the consumers' category, this being the criterion in relation with which is essentially established the domain of application of the regulation governing the relations between the traders and consumers. It is considered a subjective criterion, to which will be added another objective criterion, that of the aim of acquiring the product or carrying out the service, namely, the consumption for the owners' own use.

At national level, the attempt of determining the notion of „consumer" is substantiated at this date, in the conditions in which the jurisprudence is very poor[ix], only on landmarks of legislative text. The normative documents adopted in the domain of the consumers' protection, both the regulations having a general character and those having a sectorial character, as a result of the changes occurred so far, define in a unitary acceptation the notion of „consumer" – any physical

person or group of physical persons set up in associations, who operate in purposes outside their commercial, industrial or production, craftsmanship or liberal activity".

We conclude that the benefit of the protection is, as a result of the restrictive definition of the notion, mainly granted to the physical person, similarly to the communitarian regulations and to the jurisprudence of the Court of Justice of the European Community, and the criteria according to which the benefit of the protection is granted is the usage of the product for purposes outside his commercial, industrial or production activity, artisan or liberal, therefore using them for fulfilling their personal, non-professional needs. Besides the physical person, a group of physical persons constituted in associations, namely the consumers' associations, enjoy the benefit of protection as well.

Subsection 3. Norms having a general character

I.3.1 Order of the Romanian Government no. 21 from 1992 concerning the consumers' protection[x] in force since 28.08.1992, makes up the „*common right*" in matter of consumers' protection at national level, establishing, *prima facie*, in the year 1992, rights for the consumers, in this quality, and obligations for the traders in the relations between them and the consumers.

OG 21 from 1992 concerning the consumers' protection has a large regulations frame. The Romanian consumer must be eminently protected both against the unfair practices used by the traders who were discovering, after 50 years, the state of exercise of the commercial activity and competition, and towards their own imprudence generated by the unhealthy consumption formed in the previous decades. It is obvious that transcending from one consumer process to another is an ample and long-lasting process; for instance, in 1990, therefore after 50 years, in which the behavior of the Romanian consumer was based on the syntagm „limiting consumption" that had made a sad career in the epoch, the consumption behavior is, generally, based on the syntagm generated by the present consumering aspiration „consuming anything, no matter how much". As one has noticed"in order to balance the relations between the economic partners", it is, probably, more important to modify the consumers' behavior than to increase the number of juridical rules. It is necessary that the consumers should assume, as far as possible, their own protection[xi].

The main rights of the consumers expressly laid down by article 3 of this regulation are: the right to be protected against the risk of purchasing a product or to benefit from a service that might prejudice their life, health or safety or might affect their rights and their legitimate interests; to be completely, correctly and precisely informed about the essential characteristics of the products and services, in such a way that the decision they adopt about it should meet their needs as well as possible, as well as to be educated in their quality of consumers; the right to have access to markets that provide them a large range of high quality products and services; the right to be reimbursed for the damages generated by inadequate quality of the products and of the services, by using in this respect the means stipulated by the law; the right to organize themselves in consumers' organizations, which should protect their interests.

The norms within the order are grouped, in the content in which the order is in force now, in ten chapters including large spheres of regulations in the domain of the consumers' protection; regulations concerning the protection of the consumers' life, health and safety; to the protection of the consumers' economic interests; regulations concerning the consumers' information and education.

The institution specialized in the domain of the consumers' protection qualified by the order is the National Authority for the Consumers' Protection[xii] a specialized body of the central public administration, subordinated to the Romanian Government, which coordinates and carries out the policy of the government in the domain of consumers' protection ANCP has, mainly, general attributions in the domain of the consumers' protection: to draw up the strategy in the domain of the consumers' protection; to propose and approve projects of normative documents in the domain of the consumers' protection.; attributions are to prevent, to verify and to control. The organization and the operation of ANPC was settled after 1992 by government decision, but by each of the sector regulations ANPC is qualified to carry out the respective specific activities.[xiii]

For the consumers' associations, which also acquire legitimacy on the grounds of the

OG 21 from 1992, a procedural means stipulated in the article 37, letter *h* is expressly set up – the right to sue for defending the consumers' legitimate rights and interests. The actions in the law courts are exempted of the tax, but not of the lawyer fee. The Public Ministry from Romania is qualified to intervene in the civil actions introduced by the consumers' associations in which the consumers' interests are involved. The order also regulates the setting up of the contents for informing and consulting the consumers at level of offices in the structure of consumers' associations. The Consumer Protection Association from Romania is recognized as a public interest association.

I.3.2. The Order of the Romanian Government 99 from 2000 related to marketing commercializing the market products and services[xiv] in force since 01.01.2001, groups the norms for the consumers' protection in eight chapters, including the following regulating spheres in the domain of consumers' protection: regulating the requirements, the criteria necessary for the progress of the commercial activities and the timetables; regulating the obligations and the responsibilities of the local public administration: regulating some permitted commercial practices: retail sales, including distant sales, direct sales including sales outside commercial spaces, sales by means of networks, advertising lotteries, sales with bonuses; settling the interdiction of some commercial practices, namely selling at a loss, pyramidal selling, selling practiced by the procedure called „boule de neige"- snow-ball, or any other similar procedures; regulations related to the interdiction for a service to be done to a consumer, conditioned by paying for another service or buying another product; to forbid the forced selling; the refusal of selling a product or service to a consumer without any justified reason.

The Law 296 from 2004 concerning the Consumer Code[xv], in force since 01.01.2007, Set forth, for the first time in the national legislation, the basic principles for the consumers' protection: contradictoriness, the celerity of the research procedure, proportionality, equality of the proposed measures, confidentiality.

The norms from the Consumer Code from Romania are grouped on the following levels: regulation of the consumers' rights; obligations and interdictions for the economic agents; general frame for the obligatoriness of the consumers' information and education; advertising the products and services; general frame for prices and tariffs; regulation of the unfair clauses; general frame concerning the obligation for the compliance and safety of the products and services; qualifying the public territorial central and local institutions in the domain of consumers' protection; setting up the Consumer National Institute [xvi]; regulating the organizational frame for the non-government organizations.

The domain in which the Consumer Code is applied in Romania is expanded in relation with the previous regulations, also including expressly the financial services meant for the consumers; it determines *in extenso* the consumers' rights in the contracts concluded with the consumers; it includes in its regulations domain rules about advertising products and services. It is also expressly determined the *statu quo* of the regulation included in the code – they will rightfully be part of the contracts concluded with the consumers, and the Annex of the Code lists, it is true only as exemplification, the terms used in the legislation concerning the consumers' protection.

From the point of view of the juridical technique, the option was the following solution: the legal regulations in force, concerning the consumers' protection that is not included in the code should be taken over as annexes of the code. The chosen solution is not safe from criticism, because, the fact that we are however in the presence of a code, which, however, does not join *de facto* under the same cover, all the settlements providing the consumers' protection, may lead to a certain decrease of the coherence of the protection system.

Subsection 4. Norms having a sectorial character.

In a stage subsequent to the drawing up of the general regulations, the sectorial regulations for certain domains were drawn up, in which the consumers needed increased protection: advertising, informing about the prices of the products offered the consumers for sale, unfair clauses from the contracts concluded between the traders and the consumers; the contracts negotiated away from business premises; concluding and executing distant contracts related to financial services; consumer credit; packages of

tourism services; protection of the contracts related to the right to use some immovable goods for a limited period; selling of the products and warranties associated; general safety of the products; responsibility of the producers for the damages generated by the defective products; unfair commercial practices and ways to cease the unlawful practices in respect of the protection of consumers' collective interests. Because of reasons related to the length of the study, the vertical settlements from certain domains, such as food products, cosmetics will not make the object of this study, without diminishing their importance. Along with these regulations, the consumer law also includes administrative and penal regulations.

The rules set up by the sector normative acts will be presented from the perspective of the protection means of the consumers within their area.

Section II . Regulated domains

Subsection 1. Advertising

Sedes materiae in the domain of advertising is the Law 148 from 26 July 2000 concerning advertising [xvii], in force since 31 October 2000, with amendments and completions, which transposes the Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising[xviii], modified by Directive 97/55/EC of European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising[xix] .

Ensuring the protection of the rights and of the economic interests of the consumers has become a desideratum based on the fact that the protecting rules are applied not only to the contract itself – concluded between the trader and the consumer - but also to its preliminaries[xx]".

In order to reach this desideratum interdictions have been established by law, mainly for the ensemble of methods and means used for the presentation by advertising of the products or of services, since advertising is considered „the most active intervention in the process of decision making for purchase"[xxi]. Therefore, advertising can affect the consumers' economical behavior, by the fact that it makes them make the decision for purchase, endangering their interests by the created deception, in case the products do not meet their legitimate expectations. It is noticed that advertising has an optional nature and the inequality between the consumers and the traders is irrelevant in terms of law enforcement. Despite all this, the purpose of the law is to protect the consumers and the competitors. Moreover, the norms enclosed in the law are basically the ones which will govern the advertising of the products and services regulated by the sector norms of the consumers' protection.

The Law 148 from 2000 concerning advertising has its application domain, according to articles 2 and 3, the content of the advertising materials and of the advertising messages transmitted by any means of communication that makes possible the transfer of information. Therefore the regulation within the law has a general applicability for any type of support by which advertising materials are propagated. As from all types of supports, the broadest degree of spreading and broadcasting the advertising message is by far held by mass media, advertising by these means will be regulated both by the stipulations within the law and by special norms.

Substantial stipulations from the Law 148 from 2000:

- Interdiction of the misleading advertising;

The law 148 from 2000 stipulates at article 5, that advertising must be decent, correct and elaborated in the spirit of social responsibility. The finality of advertising is the choice, the maintenance and the increase of consumers' number, in order to promote products and services, a finality for which traders use diversified methods for the presentation of the products and the services, methods that may infringe the principle of loyalty and honesty in the relations with the potential consumers, if they have a misleading character.

According to the stipulations of article 4, letter b, from the Law 148 from 2000, misleading advertising is any advertising which, in any way, including the presentation way misleads or might mislead any persons which it addresses or comes into contact with it and might affect their economic behavior, by endangering their consumers' interests or might injure a competitor's interests.

According to article 7 from the Law 148 from 2000 concerning advertising, in order to

determine the misleading character of advertising, the characteristics of the products and services will be taken into consideration, and especially the following: availability, nature, modality of execution and packaging, composition, method and manufacture or supply date, the measure in which they meet the intended aim, the destination, the quantity, the technical and functional parameters, the producer, the geographical or commercial origin or the results of the tests and trials carried out on the goods and the services, as well as the expected results; the price or the modality in which the price is calculated, as well as the condition in which the products are distributed or the services are carried out; the nature, the attributions and the rights of the one who advertises, such as: identity, nominal share capital, qualification, the right to industrial property, awarded prizes and distinctions; omission of some essential information concerning the identification and the description of the goods and services, in order to mislead the persons they are addressing.

The regulations of the characteristics from the text of the law has a declarative character, therefore, some other characteristics, which have not been set forth, are liable to being taken into consideration for the appreciation of the misleading character of advertising. The characteristics for which the misleading character of advertising will be appreciated will be taken into consideration irrespective of the means used for advertising.

- Interdiction of the comparative advertising illicit;

Comparative advertising, carried out by comparing the essential, pertinent, verifiable and representative characteristics of the product and services can be a means of informing the consumers. In order to determine the practices of comparative advertising that may attract competition distortions, the comparative competition is allowed, but one must determine deliberately, by law, the hypothesis in which it may harm the competitors' and consumers' interests.

The comparative advertising is defined by the Law 148 from 2000 concerning advertising, at article 4, letter *c*, as being any advertising that identifies explicitly or implicitly a competitor or the goods or services offered by them.

The law determines expressly, by using the negative criteria, the hypotheses when comparative advertising is illicit: the comparison is misleading, according to the norms examined *ut supra;* goods or services having different scopes or destinations are compared; there is no comparison, objectively, between one or several essential, relevant, verifiable and representative characteristics - where the price can also be included - of some goods or services; confusion is created on the market between the advertiser and a competitor or between the brands, the commercial names or any other distinctive signs, goods or services of the advertiser and those belonging to a competitor; the brands, the commercial names, other distinctive signs, goods, services or the material situation of a competitor are discredited; products with the same indication, in case of products with geographical indication, are not to be compared; incorrect advantage is taken in case of a trade mark and any distinctive signs of a competitor or of the geographical indication of a competitor's product.

-Fixing the conditions for the responsibility and of the holder for putting into execution the misleading or comparative advertising in the hypotheses where it is forbidden or illicit;

The conditions for the responsibility for putting into execution the misleading or the comparative advertising is punishable responsibility, and its holder is the person that make his advertising.

- Setting up the procedural means about the proofs – the person that makes the advertising is in charge of the proof;

The Law 148 from 2000 stipulates in article 20 the procedural means according to which the person that makes the advertising is also in charge of proving the exactness of the statements, indications or presentations from the advertising announcement. Here therefore operates the juridical technique of reverting the proof charge, in such a way that this is not incumbent, according to the stipulations of article 1169, Romanian Civil Code, „on the one who makes a proposal before trial", namely on the consumer, but on the person that makes the advertising.

At the request of the representatives of the qualified institutions, this person is obliged

to supply the documents proving their exactness, and if the documents are not supplied within maximum 7 days after they have been requested, or if it is considered that they are not sufficient, the statements from the respective advertising will be considered inaccurate – according to article 20, paragraph 2.

- Setting up some special regulations in advertising in order to protect a special category of consumers – the minors;

The minor is a specific target for advertising, especially that by means of mass media. Therefore the national legislator has established ways of protecting them, which are included in article 16, by setting up interdictions in this respect, in such a way that advertising should not harm the minors physically, morally or psychically.

- Setting up some special rules for advertising some categories of products;

The Law 148 from 2000 stipulates, in the articles 10-15 different categories of interdictions concerning the advertising by certain means, in certain locations, in case of some types of programs, for some special categories of consumers, the products for which the interdictions are set up: tobacco, alcoholic drinks, drugs, ammunition, explosives, and medicine.

- Setting up special rules for audio-visual advertising;

As far as advertising by audio and visual means is concerned, the article 4 of the Directive 84/450/EEC stipulates that the Member States, depending on their juridical tradition, may confer upon the courts or the administrative authorities' powers enabling them to settle up the audio-visual advertising, the basic requirement being that the means should be adequate and efficient.

In Romania the National Council for the Audio-visual[xxii] was set up by the Law 48 from 21 May 1992, which is an autonomous public authority, the unique authority which settles the audio-visual domain. The first obligatory Norm of CNA concerning advertising during the audio-visual advertising broadcast by radio or cable was adopted on 22.07.1993.[xxiii] At this date the Decision 187 from 03.04.2006, concerning the Code of regulating the audio-visual content, has been in force since 14.04.2006, The list of works consulted when drawing-up this monograph was also the base of this study, and it is available at www.sferajurica.ro therefore the domains within the decision, both from the perspective of the expanded contents and of the accuracy of the norms is a real code from the point of view of the audio-visual. The decision includes the following regulating domains: child protection, protection of human dignity and of the right to one's own image, the right of reply and rectification; notifying the CNA; ensuring correct information and pluralism; cultural responsibilities; games and competitions; sponsorship, advertising, TV shopping.

The general rules for carrying out the audio-visual advertising include: regulating misleading and comparative advertising, of TV shopping matter, regulating the duration, form, presentation and insertion of advertising within the programs; regulating interdictions for TV advertising for cigarettes and other tobacco products; for medicines; alcohol; food as well as political advertising or that referring to exercising a certain profession.

Enforced with a view to purging the competition environment and protecting the consumers, the regulations on advertising have in place at this stage the guiding principles and CNA is active by exercising its duties of verifying and controlling the advertising.

Subsection 2. Displaying the prices of the products offered to the consumers for sale

The regulation for the ways in which the products offered to the consumers for sale is included in the Decision of the Romanian Government 947 from 13 October 2000. The Decision transposes the Directive 98/6/CE of the European Parliament and of the Council from 16 February 1998 related to the consumers' protection in the matter of displaying the products offered to the consumers.[xxiv].

The means for the consumers' protection set up by the normative document are:

- Determination of the obligatory element from the advertisement content in which the price is referred to, namely the price;

- Setting up the trader's obligation to inform the consumer about the price.

The aspect related to information will be encountered in all regulated domains, based on the fact that "Right to information has rightfully become one of the major themes of any policy of consumers'

protection"[xxv].

Subsection 3.Contracts negotiated away from business premises -"*door to door selling"*

Sedes materiae is the O.G. 106 from 30 August 1999 in respect of contracts negotiated away from business premises[xxvi], which came into effect on 31.09.1999, with amendments and completions is still in force at present and transposes Council Directive 85/577 of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises[xxvii]. Usually the traders carry out their offer by launching the offer and forming the contract with the consumers in authorized business premises, but trading products and services is carried out by different categories of commercial practices, real marketing means, a practice in this respect being the formation of the contracts away from business premises.

Cross-border distance selling is considered one of the main tangible results for the consumers in order to achieve a unique market, in case the access of the consumers to goods and services from another Member State is allowed, in the same conditions as the population of the same state.

The legislator has set up regulations for the protection of the consumers concluding such contracts, because, in case of negotiating the contracts away from business premises, the consumer's consent is given under pressure, exerted on him by the trader under the following circumstances:- during a trip organized by the trader away from his business premises; during a trip carried out by the trader, if it did not take place at the express request of the consumer, namely, at a consumer's home, where contracts can also be concluded with other people present there, at the consumer's work place or where he is, even temporarily, for work, study or medical care; - or in any other public places or places meant for the public, where the trader presents an offer for the products or services that he supplies, in view or their being accepted by the consumer.

In the hypothesis of negotiating the contract away from the business premises, the consumer's protection is settled as follows:

- Settling the consumer's right of withdrawal from the contract;

Article 9 of the Order of the Romanian Government 106 from 1999 regulating the consumer's right of al from the contract;

The order stipulates expressly the term for the withdrawal from the contract – 7 working days, a term that begins to run: from the date when the contract was concluded, it this coincides with the date when the product was supplied; - from the date when the contract for supplying services was concluded; - from the date when the product was received by the consumer, if the delivery took place after the date when the contract was concluded.

The procedure of exerting the al right is expressly stipulated: the consumer will notify the trader in writing, by certified letter with notice of receipt, the notification exonerating the consumer of any obligation, except that of returning the supplied products.

The effects of exerting the right of withdrawal from the contract are distinct in relation with the execution or non-execution of the contract: if the contract was executed, therefore the consumer did not carry out any payment and did not receive the product, the contract is terminated; if the product was received and paid by the consumer, the contract is terminated and the parties will return the product and the price to each other.

- Obligation of informing the consumer by the trader correlated with the of withdrawal from the contract; determining the elements of the content of the obligation of informing the consumer;

The trader will inform the consumer in writing, according to article 8, before or at the latest in the moment when the contract is concluded, about the right of the latter to from the contract, by indicating the name and the address of the person towards which he can exert this right.

- Setting up the obligation the contractual document of the contract and determining the elements from its content;

The article 7 of the OG 106 from 1999 imperiously stipulates the obligation of concluding the contractual document, at the latest until the moment when the product or the service is delivered, therefore this time the liberty of the parties to apply the principle of consensus is also

banned for the consumers' protection, the requirement for the written form being expressly stipulated by the law. For the same reasons, the liberty of the parties to establish contractual clauses is attenuated, some minimal clauses of the contractual document being expressly stipulated.

Subsection 4. Distant contracts and distant marketing of consumer financial services

Sedes materiae is the Order of the Romanian Government 130 from 31 August 2000 concerning the consumers' protection when concluding and executing the distant contracts[xxviii] come into force on 02.09.2000 and the Order of the Romanian Government 85 from 19 August 2004 relating to the consumers' protection when concluding and executing distant contracts about financial services[xxix]; come into force, on 26.09.2004, which transpose Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts[xxx] and respectively, Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC[xxxi].

The objectives of the regulations about the distant contracts are, mainly, to ensure the access of the consumers from another Member State to have access to goods and services under the same conditions as in the original state, in relation with the increase of cross-border sales, and considering their immaterial nature, the financial services are suitable especially for distant sales, by establishing some common rules for the Member States.

As for as the distant contracts, similar to the contracts negotiated away from the business premises, the consumers need protection, because this time as well, the consent given when concluding the contract can be affected, on one side, because they do not get into personal contact with the products therefore, after the delivery, products may not meet their expectations. On the other hand, regulating some rules for distant sale of the financial services increases the consumers' confidence in using the distant sale techniques.

Distant contracts are concluded by using distant communication techniques. According to article 2, letter 2 of the Order 130 from August 2000 and to article 3, letter e of Order 85 from 2004 the notion is defined as being any means that can be used to conclude a contract between the trader and the consumer and which does not require the two parties' simultaneous physical presence. The Annex of Order 130 from 31 August 2000, by using the technical procedure of the Annex list, the list of concerning the techniques of distant communication is taken over from the Directive 97/7/CE. Neither Directive 2002/65/EC and, therefore, nor Order 85 from 2004 determine which are the communication techniques, because their permanent evolution does not allow the drawing up of an exhaustive list, but makes it necessary to establish the general principles applicable even to those means that are not used on a large scale yet.

- The consumer right of withdrawal from the distance contract;

According to the stipulations of article 7 from O.G. 130 from 2000 and to the stipulations of article 9 from the O.G. 85 from 2004 the consumer has the right to from the distance contract, without penalties and without invoking any reason.

The term is expressly stipulated as being 10 working days for the distant contracts that do have financial services as object and 14 calendar days for distant financial services.

The 10 days term runs: for products, from the date when they were received by the consumer, if the trader has fulfilled his obligation to inform in writing, on paper or other durable medium; for services, from the day when the contract was concluded or after the contract was concluded, from the day when the obligation of informing in writing, on paper or other the durable medium was carried out, on condition that the delay is no longer than 90 days.

The term of 14 days runs: from the day when the distant contract was concluded or from the day when the consumer receives the contractual terms and conditions and the information in writing, on paper or on any durable medium, provided this information is previous to the first hypothesis mentioned above. The procedure of exerting the right is expressly stipulated: the consumer will notify the trader about exerting his right.

The effects of exerting the right by the consumer consist in the fact that the trader has the obligation to refund the sums paid by the consumer without requiring him to pay the cost

incurred by paying pack the sums. However, „the all right means little for the consumer who has paid the purchase price and has difficulties in getting the money back"[xxxii]. The consumer will have the obligation to pay the direct expenses for sending the products back.

As an effect of exerting the right, the credit contract is ceased of right as well without any penalties for the consumer, in the hypothesis that, for the product or the service that makes the object of the distant contract, the trader credits the consumer, directly or on the grounds of a contract concluded with a third party. The stipulation is an expression of the connection between the two contracts within the credit operation, namely of the credit and the sales contract.

- The trader's obligation to inform the consumer about his right of withdrawal; determination of the elements from the content of the information obligation;

The trader will fully inform the consumer in writing about the contractual terms and conditions, on paper or on any other durable medium, available and accessible to the consumer, in due time, before he should have obligations resulted from signing such a distant contract or from accepting the offer of such a distant financial service. In case, the contract was concluded by using some distant communication means at the consumer's express requests, which do not allow the fulfillment of the procedure of previously informing the consumer, the supplier will carry out his obligations immediately after the conclusion of the distant contract. Over the whole period of the contract, the consumer has the right to require the communication of the contractual conditions and stipulations on paper support.

A special position is held by the Law 365 from 07.06.2002 about the electronic commerce, in force since 05.07.2002. The Law transposes the Directive 2000/31/CE related to certain juridical aspects concerning the services of the informational companies, especially the electronic commerce on the internal market. regulates the regime of the commercial communications by electronic mail; the contracts concluded by electronic means, namely the conclusion, the validity, the juridical aspects and the proof; sets up specific obligations for the suppliers of electronic services; qualifies in the domain the Authority for regulating the communication and the technology of information for activities of verifications, control and application of the sanctions.

Subsection 5. Unfair clauses

Sedes materiae is the Law 193 from 6 November 2000 about the unfair clauses from the contracts concluded between the sellers and the consumers, which has been in force since 10.12.2000, with amendments and completions, a law which transposes Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts[xxxiii].

In this law the following essential aspects concerning the improvement of the contract relations between traders and consumers are regulated:

- Traders are forbidden to stipulate abusive clauses in the contracts concluded with the consumers;

Set up by article 1, paragraph 3, the interdiction has a general character. According to article 4 from the Law 193 from 2000 the contractual clause that has not been negotiated directly with the consumer will be considered an abusive clause if, by itself or with other stipulations from the contract it creates a significant lack of balance between the parties' rights and obligations to the detriment of the consumer and against the requirements of *bona fide.*

Essentially, the criteria stipulated in article 4, paragraph 1, 2, 3 and 4, according to which the unfair character of a clause is determined are:

- creating a significant lack of balance between the rights and the obligations of the parties to the detriment of the consumer and against the requirements of bona fide, according to article 4, point 1 of the Law 193 from 2000. The deterioration of the contractual balance by the trader's misuse of authority, which imposes, at the moment when the contract is created, clauses that create an advantage for him in the detriment of the consumer, is one of the criteria according to which the unfair character of the respective clause is determined. Usually, a clause that determines a lack of balance of the contract can be anytime appreciated as not being in conformity with *bona fide*, especially when the consumer's legitimate interests are not taken into consideration.

The reference to the criteria of bona fide is, *de facto,* the requirement for an objective standard behavior which the consumers expect from a professional in a legitimate way. The principle of *bona fide* shows the mutual respect of the contracting parties and requires an honest and reasonable behavior which has in view the consumer's legitimate interests. The *bona fide* has also been deliberately reiterated as a criterion for determining the abusive clauses, in the conditions in which the article 970 of the Romanian Civil Code establishes this principle in the contractual relations.

The lack or the insufficiency of the direct negotiation with the consumer of the respective clause. A contractual clause will be considered as not being negotiated directly with the consumer, according to the article 4, paragraph 2 of the law, if it has been established without allowing the consumer to influence its nature. Therefore, the absence of direct negotiation with the consumer is equivalent with establishing the clause unilaterally by the trader and with situating the consumer in the impossibility of influencing the nature of the clause. Considering this hypothesis, a relative presumption of absence of direct negotiation of the contractual clauses with the consumer is set up.

The insufficiency of the negotiation, either as a result of negotiating only some aspects or negotiating only one clause directly with the consumer, a global evaluation of the contract pointing out that it has been pre-established unilaterally by the trader, determines, according to article 4, paragraph 3 from the Law 193 from 2000 the unfair character of a clause. The unfair character of a clause is also analyzed taking into account the nature of the products and of the services which constitute the object of the contract at the moment when it was concluded; the circumstances that determined the conclusion of the contract and other causes of the contract or of other contracts it depends on.

Another criterion to determine the unfair clauses, stipulated by the article 4 paragraph 4 of the law is to determine them by the technical procedure of taking over the annex list of the Directive 93/13/EEC, an indicative and non-exhaustive list that includes the clauses that can be considered as being abusive. In the national legislation, the list that includes the clauses considered as being unfair has been taken over as „the grey list" and renders these clauses as examples.

- The fight against unfair clauses; determining the punishing regime and the procedure applicable for suppressing the unfair clauses;

The Law 193 from 2000 stipulates two types of civil sanctions, namely:

- For the unfair clauses included in the contract the law 193 from 2000 stipulates two types of civil sanctions, namely:

- for the unfair clauses included in the contract and ascertained, either personally or by the legally qualified bodies, the sanction is depriving these clauses of effect, therefore the clauses are without effect and the contract will continue to be executed only if, after eliminating them, it still can be executed. The basis of the obligatory force of the contract synthesized in the principle *pacta sunt servanta* is the parties' will, but at the moment when one of the parties – the consumer, did not express his free will, due to the fact that all or certain clauses have been pre-established by the trader, or, because of these reasons, the unfair clauses have no legal efficiency.

In the hypothesis when the contract cannot produce its effect after removing the clauses considered unfair, according to article 7 of the Law 193 from 2000, the consumer has the right demand the termination of the contract, and can also demand compensations.

The procedure applicable for the suppression of unfair clauses, stipulated by articles 9 -13, includes the control of observing the stipulations of the Law by ANPC, which carries out verifications when the prejudiced persons inform or *ex officio* and draws up a report. The report is sent to the instance which, in case unfair clauses are found in the contract, applies the sanction and disposes the change of the contractual clauses, as long as the contract remains valid, or disposes the suppression of the contract.

- Setting up the procedural means about the proofs;

Article 4, paragraph 3 from the Law 193 from 2000 stipulates that, in the hypothesis in

which the traders pretends that a standard clause pre-formulated has been negotiated directly with the consumer, the trader has the proof.

- *Setting* up general rules for drawing up and interpreting the contracts concluded between the traders and the consumers;

The Law 193 from 2000 stipulates in article 1 point 1 that in any contract concluded between traders and consumers, whose object is selling goods or supplying services clear, unambiguous clauses will be stipulated, for whose understanding no specialized knowledge is necessary.

In case of doubts about interpreting some contractual clauses they will be interpreted in favor of the consumer, according to article 1, point 2 of the Law 193 from 2000.

- Establishing the institutional frame for fighting against unfair clauses by specialized bodies - Commission for unfair clauses;

The Commission for Abusive Clauses has been set up on the grounds of article 4 and 5 from the Order of ANPC 531 from 12 December 2001[xxxiv] having the statute of nonprofit, independent consultative body, made up of the representatives of the specialized bodies of the central public administration, of the representatives of the economic agents and of the consumers' representatives, in order to represent the non-government organizations in the decisional process as well as to obtained the best substantiated opinions about the unfair clauses from the contracts concluded with the consumers.

When exerting their attributions the commission analyze and give out their consultative point of view about: elimination or modification of the contractual clauses and conditions which they consider might create a lack of balance between the parties' rights and obligations, to the consumers' detriment; including in the contracts some clauses, mentions and specifications which they consider necessary for informing the consumers or whose absence is considered that it might create a lack of balance between the parties' obligations and rights, to the detriment of the consumers' rights; the clear wording of the contractual clauses and conditions which will allow the consumers to clearly understand the meaning and the dimension of their effect on them.

The Commission can be consulted by ANPC, the Inter ministerial Committee for Supervising the Products and Service Market and Consumers' Protection, as well as by the instances, which will be informed, within maximum 30 days after the notifications have been recorded, about the commission's point of view, which has a consultative character. The Commission's point of view is also transmitted, if necessary, to the specialized bodies of the competent public administration.

Although the settlement of the problem of unfair clauses by the Law 193 from 2000 proves to be a generous legislative frame towards ensuring the consumers' protection, de *facto,* in its substance it is debatable, because the principles from the contents of the settlement are barely known by the consumers and are applied by the traders in the same way. The bodies with general attributions for verification and control in the matter are centered with priority on flagrant infringements of the consumers' rights, which consist in selling products with quality deficiencies or which are expired. As far as the Commission for Unfair Clauses is concerned, settled according to the French model, a model having as basis the efficiency and the transparency of the activity is uselessly "haunting" the Romanian Consumer Law.

Subsection 4. Marketing the packages of tourist services.

The Order of the Romanian Government 107 from 30.07.1999 related to the activity of marketing the packages of tourist services[xxxv] amended and completed transposes the Directive of the Council 90/314/CEE from 13 June 1990 related to the packages of services for travels, and circuits[xxxvi].

The juridical means included in the order are:

- Setting up the obligation of the tourism agency to inform the tourist pre-contractually and determination of the elements from its content;

Any information about the package of tourist services, its price and all the other conditions applicable to the contract, communicated to the consumer by the organizer or by the retailer must contain clear and correct indications, which should not allow their equivoque

interpretations. The information included in the advertising materials engage the organizer or the retailer of tourist travels, with the exception of some hypotheses expressly determined.

- Setting up the obligation of concluding the contractual document and determination of the documents from its content;

The control attributions refer to the specialized bodies of the Ministry for Small and Medium-sized Companies, Commerce, Tourism and Liberal Professions and of ANPC.

Subsection 5. Protection of purchasers in respect of certain aspects of contracts to the purchase of the right to use immovable properties-timeshare

Sedes materiae is the Law 282 from 23 June 2004 concerning the protection of purchasers in respect of certain aspects of contracts to the purchase of the right to use immovable properties[xxxvii] on a timeshare basis in force since 28.09. 2004, a law that transposes the Directive 94/47/EC of the European Parliament and the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis[xxxviii] .

The domain where the law is applied is, according to article 2, paragraph 1, letter *a* and *b*, the information about the content of the contracts and the modalities of communicating this information by the purchaser and, respectively, the procedures and the modalities of canceling or terminating the contract.

According to the stipulations of the article 3, letter a from the Law 282 from 2004, the notion of „contract related to purchasing the right to use the immovable properties on a time share basis" is defined as being the contract or the group of contracts concluded for minimum 3, with the payment of a global price by which, directly or indirectly, any real right or any other right related to the use of one or several immovable properties for a determined or determinable period of the year, but cannot be less than a week, is set up or makes the object of a transfer or of an engagement for the transfer of such a right.

The contract about purchasing such a right of use on a time share basis of some immovable properties, as it is settled in the Law 282 from 2004, is characterized by the following elements:

- It is concluded for a period of minimum 3 years;
- A right is set up or transferred or there is an offer or a promise of transfer of a certain *real right* or *any other right* concerning the use of any or several immovable properties. The juridical nature of the rights over the immovable property that makes the object of the contract have not been submitted to harmonization, the aim of the Directive 94/47/EC being that of creating common minimal rules that make possible the operation on the internal market and ensure the protection of the purchasers, because the European space is remarked by a diversity of the techniques that have as consequence the purchase of the right of using on a time share basis an immovable property. But "in future this - the right of use on a timeshared basis – involves attributes that detach it from its immovable support and gives it a mobility that tends to be essential."[xxxix]
- The real right or any other right regarding the use is set up or is transferred for a determined or determinable period of the year, which cannot be less than a week;
- The purchaser will pay the seller a global price.

Therefore the Law 282 from 2004 will be applicable to ensure the protection of the purchasers of any contract, offer or promise of a contract, which is characterized by the elements shown above. It is obvious that the right to use an immovable property on a time shared basis necessarily supposes specific rights and obligations, such as: furnishing, maintenance, repairs which therefore cannot be included in the rights and obligations that make the object of selling the package of tourist services or of location, proximal juridical institutions.

The immovable asset is defined in article 2, letter b from the Law 282 from 2004, as being any immovable property or part of it, whose destination is living, related to the right that makes the object of the contract. The express stipulation about the use of the immovable property – For living, namely, to be used by the purchaser and his family, has as consequence the inclusion of this contract in the domain of those for which the protection of the purchaser's economic

interests is aimed.

- Setting up the obligation of pre-contractual and contractual information of the purchaser by the seller

According to article 4 of the Law 282 from 2004, the seller is obliged to inform any other person requesting information about the immovable asset by supplying a document which, besides the general description of the respective immovable property, will also offer minimal information about some elements stipulated expressly, as well as the way in which complementary information can be obtained. In case this obligation is not fulfilled, the sanction is the cancellation of the contract, the right to require the cancellation being express settled.

- Determining the obligatory elements from the content of the information and advertising

The elements included in the content of the obligation of pre-contractual information, which will be included in the document, are stipulated in the annex to the law, by using the juridical technique of the Annex list. According to article 4, paragraph 2, of the Law 282 from 2004, the information included in the document and shown are an integral part of the contract, in case this is concluded.

The purchaser will be informed about the information shown above before the moment when the contract is concluded, and one will mention in the contract, expressly, any modifications of the above mentioned information, according to article 4 paragraph 4 from the Law 282 from 2004. It is permitted to modify the information included in the document, without the purchaser's express agreement, only if it results from causes that are independent of the seller's will, in any other situation being applicable the principle of symmetry.

According to article 3, point 5, from the Law 282 from 2004 any advertising referring to the respective immovable property will indicate an obligatory element in its content, namely the possibility of obtaining the previously shown document, as well as the place where from it can be obtained.

- Obligation to obtain the contract in writing and determining the elements from its content;

The Law 282 from 2004 stipulates in article 5, paragraph 1, the obligation to conclude the contract in writing, under the sanctions of absolute nullity. This time too, the procedure of the annex list is applied, a list which includes the minimal obligatory elements from the content of the contract.

- Setting up the purchaser's right to the contract;

The law 282 from 2004 settles, according to article 6, paragraph 1 the purchaser's right to the contract, without being necessary to invoke any reason, within 10 calendar days after it was signed by both contracting parties or after the date when the parties have signed an ante-contract, according to the case. "The special circumstances of the timeshare regime cannot be underestimated. Obviously it is about a new and special contract, accompanied by a persuasion technique clearly aggressive which, if it cannot have as consequence an annulment of the consent, leads in all cases to an alteration of the subject's capacity of decision. Where from results the correcting mechanism constituted by the all term, which allows the purchaser to think about the advantages and the inconveniencies of his act."[xl]. The procedure by which the purchaser exerts his right is the notification sent to the seller.

As an effect of exerting the right by the consumer, the purchaser may ask the termination of the credit contract, without penalties and interest, if the price of the contract is totally or partly covered by a credit granted to the purchaser by the seller or by a third party, an effect which is and expression of the connection between the two contracts.

- Setting up the sanction of the nullity for the contractual clauses by which the purchaser is requested advance payment of any sum, before the maturity of the term when he can excerpt the right to unilateral denouncement of the contract;

It is carried out according to the stipulations of article 7 from the Law 282 from 2004.

Subsection 6. Consumer credit

Sedes materiae is the Law 289 from 24.06.2004 related to the juridical regime of the consumer credit contracts, for physical persons[xli], a law that has come into force on 06.01.2005 and transposes the Directive 87/102 CEE of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit[xlii] amended by Directive 90/88/CEE of the Council from February 1999 and by Directive 98/7/CE

The central pillar of the juridical means for the consumers' protection, settled at communitarian level in the matter of the credit contract meant for the consumer is the introduction of the annual percentage rate of charge in the matter of the consumer credit has created the possibility of a more emphasized harmonization of the elements included in the calculation of the annual percentage rate of change and represented a real progress for the cross-border credit, for the free circulation of goods and services. Also, the annual percentage rate of change was determined as an obligatory element in the content of advertising and of the offer by which and interest is indicated, or any other figures referring to the credit cost, so that the consumer should be correctly and completely informed about the credit conditions.

However, one has observed that the directive is better adapted to the traditional forms of consumer credit to the modern credit instruments. The distortion of competition among creditors, thus resulted, hinders the good operation of the internal market and limits the consumers' access to the offer of cross-border credits, distortions that can have, in their turn, consequences on the demand of goods and services.

On the basis of the preoccupations for adjusting the domain, in 2002 a Proposal of directive concerning the harmonization of the legislative, regulating and administrative dispositions of the Member States for consumer credit[xliii] was elaborated. It has as object the creation of an internal market for the consumer credit, more transparent and more efficient, which should ensure a higher degree of protection for the consumers; in order to reach this objective a complete harmonization of the elements that enter the domain of application of the regulation was considered necessary, to create a veritable internal market for the credit. The proposal was amended in time, and in 2008 a new directive was adopted in this respect, whose essential objective is to ensure a high degree of informing the consumers, which should facilitate the free circulation of the credit offers.

The new directive will also answer the considerable evolution of the credit types offered and used by the consumers and the setting up of new instruments of credit, in order to develop a market of the consumer credit, essential for promoting the development of the cross-border activities, in which the free circulation of the credit offers should take place in optimum conditions, both for those offering the credit and for those requiring them.

The new Directive was adopted in 2008 and it abrogates the Directive 87/102/CEE of the Council from 22 December 1986 with subsequent amendments and it will be transposed by the Member States within the 2-year term. It is obvious that within the 2-year term, the national legislator will transpose the new directive in the matter, which will offer us a good opportunity to continue the research[xliv].

The domain of the consumer credit is governed by norms having a double finality, both that of ensuring the consumers' protection and valences of banking nature, a perspective from which the domain is governed at national level by the provisions of the normative documents from the banking domains, harmonized with the communitarian ones, mainly referring to: the Statute of the Romanian National Bank[xlv], which is the competent authority in relation with settling, authorizing and prudential supervising of the credit institutions; regulating the activity of the credit institutions and adapting their capital; regulating the non-banking financial institutions; regulating the transactions carried out by means of electronic payment and relations between the participants in these transactions; regulating the cross-border transfers; The consumer credit is the financial service with the most significant increase on the Romanian market as opposed to the other East European Member States.

Means of consumers' protection included in the norms from the content of the Law 289 from 24.06.2004:

- Setting up a new category of the interest in the matter of the consumer

credit – the annual effective interest[xlvi];

The notion of „contract for consumer credit" is defined by article 2, letter c, as being the juridical document on the grounds of which the creditor grants or binds him to grant, and the consumer accepts a credit as a loan, a postponing of the payment or other similar facilities. Therefore, including all the categories of credit shown in the domain of application of the law will have as consequence the unification of their juridical regime under all aspects that make the regulation object.

Article 2, letter *d* of the law defines the notion of „total cost of the credit for the consumer", as being all costs that the consumer must pay for the credit, including the interest and the other costs, and the notion of „annual effective interest" is defined in article 2, letter *e*, as being the total cost of the credit for the consumer, expressed in annual percentage of the value of the total credit granted and calculated according to article 4. Therefore the law settles a category of interest in the domain of consumer credit, DAE and stipulates in the annex a formula for its calculation, which represents one of the most efficient means of the consumers' protection, for reasons taking into account the creation of possibilities for the consumers to compare the different offers of credit.

According to article 4, point 4 from the law, for the calculation of DAE the total cost of the credit for the consumer is determined, as it is defined in article 2, from which are excluded certain categories of determined costs. According to the provisions of article 4 point 3, DAE is calculated in the moment when the credit contract was concluded, respecting the stipulations about the credit publicity and information.

- Determining DAE as an obligatory element from the content of the offer and of advertising by which an interest or any other figures referring to the credit cost are indicated;

DAE will be indicated in any advertisement and in any offer of consumer credit, according to the stipulations of article 5 from the law, by which an interest or any other figures referring to the cost of the credit.

- Setting up the obligation of informing the consumer by the creditor and determining DAE as an obligatory element from its content;

Article 6, point *b* of the law stipulates in the creditor's charge the obligation of informing the consumer, the information being exact and complete, and DAE is an obligatory element of the content of the obligation of pre-contractual information.

The obligation of contractual information from the stage of executing the contract concerns the change occurred during the contract referring to DAE or the costs occurred after the credit contract was formed. According to article 9, point 2, the consumer will be informed in writing in the moment when this modification occurs, by registered mail with notice of receipt or by means of a statement of account which is supplied free.

- Setting up the obligation of the creditor to counsel the consumer;

Article 6 of the law stipulates the creditor's obligation to counsel the consumer, which means that, before the conclusion of the contract, the creditor has the obligation to present the credit contract that he offers, the most adequate type and value of the credit, taking into consideration the consumer's financial situation, the advantages and disadvantages associated with the suggested credit as well as its destination.

The aim of setting up the counseling is that of reaching both the consumers' expectancy, which, without being counseled, would have difficulties in choosing the credit because of its complexity, and avoiding indebting the consumers, by adapting the credit to the consumers' financial possibilities.

- Setting up the obligation of drawing up the document of the credit contract and determining the essential elements from the content of the contract;

According to the stipulations of article 7 from the law, the credit contracts will be drawn up, in writing, the material used will be paper or other durable medium, it will be drawn up in at least two copies and one copy will be given to the consumer. The article 8 of the law stipulates the minimal contents of the credit contract.

According to the provisions of article 8, point *g* of the law, the contract will also include

the other essential conditions of the credit contract, including the clauses stipulated in Annex 1. The national legislator decided to take over, within the credit contract, the essential conditions from the annex list of the directive, with juridical value of the minimal obligatory conditions, using the same juridical technique as the Directive, in the annex the clauses being grouped for four categories of credit contracts.

- Setting up some special rights of the consumers meant to warrant a contractual balance between the parties of the credit contract

-the consumer's right to refund the credit in advance;

Article 11, paragraph 1 of the law include the consumer's right to refund in advance, partly or totally, the obligations resulted from the credit contract, the settling of the conditions in which the refunding will be carried out being left at the latitude of the Member States. The conditions established by the national legislator are: according to article 11, paragraph 2, in case of refunding in advance his contractual obligations, the consumer is entitled to a fair reduction of the credit cost, established proportionally with the period when the respective credit was used. The fair reduction of the credit cost will be determined by the creditor by carrying out a just and objective analysis of the consumers' advantages in relation with the creditor's disadvantages resulted from administering the payments in advance and reinvesting the capital. The consumers will be informed about the terms for refunding the credit in advance before the credit contract is signed and will be established by respecting the above mentioned specifications. The consumer's right in case the creditor transfers the credit to a third party;

According to article 12, paragraph 1 and 2 from the law, in case the rights the creditor has according to a credit contract are transferred to a third party, the consumer has the right to invoke against the third party all the contractual rights he has at his disposal against the initial creditor, including the compensation right.

The consumer cannot be obliged to make any supplementary payment to the third party, besides the ones settled by the initial contract. The existence of a credit contract will not affect in any way the rights the consumer has in relation with the supplier of goods or services purchased with the financing granted by the creditor, in case the goods or the services are not supplied or they are only partly supplied or they do not meet the provisions of the contract conclude for their supply.

- Qualifying the institutions for supervising and controlling the activities of the credit creditors and credit intermediaries for the consumer credit;

According to article 15, paragraph 4, ANPC and BNR will supervise and control, individually or in mixed teams, according to the stipulations of article 15, paragraph 4, letter *b*, the activity of the creditors, and BNR will supervise the fulfillment of the legal conditions for recording and issuing the authorization for the creditors. The law sets up in article 15, paragraph 4, letter *a,* ANPC as being the institutions where claims about the credit contracts can be handed in, the credit conditions, and which will offer consulting.

-Adding the national system of consumers' protection in the domain of the consumer credit with the regulations related to registering the credit;

At the end of the year 2003, the Association of the Romanian Banks set up the Romanian Office for Credit which became operational beginning with 16 August 2004 and operates as an agency that monitors the credit users / physical persons and physical persons authorized to carry out liberal professions, for all categories of credits granted to them.

The increase of the number of non-per formant credits substantiates the creation of the office, which is also generated by the necessity of pointing out the clients that do not respect their obligation of refunding the credit. Therefore, exposing the clients before other creditors can be known at the moment when another credit is required, a relevant aspect both for the consumers and for the creditors, for reducing the risks of non-refunding the credit.

- Necessity of adding the national system for the consumers' protection to the settlement of the procedure for over-indebting the physical person;

Most of the Member States have now a specific legislation for regulating the over-indebting, in view of social, juridical and economical treatment of the over-indebted physical person. Procedures

have been set in for the protection of the physical persons in general and the families that are in an over-indebted situation, caused by the accumulation of the debts resulted from immovable credits and consumer credits, rents, taxes and levies that cannot be paid anymore, and therefore the liabilities of the physical person or of the family exceed their assets.

At national level no specific procedure has been set in so far, applicable to the physical person or the family that cannot face any more the due debts and at the deadline, the setting up of such a procedure being a necessity in the near future[xlvii].

Means of consumer protection set up by the new directive adopted by the European Parliament on 07.04.2008

Without having the intention to make an exhaustive analysis of the new directive, we will point out the juridical means from its content which enforces the consumers' protection, pointing out only the aspects that represent a novelty submitted to harmonization and which will be set up at national level as well, when transposing the directive.

One can notice from the very beginning that the delimitation from the previous means of consumers' protection is the creditor's obligation to inform the consumer. Having an expanded scope, which includes several essential elements, without being centered only on DAE, informing the consumers is the keystone of their protection in the credit landscape.

- Advertising versus informing; the publicity for the consumer credit that indicates an interest rate or any other figures referring to the cost of the credit is carried out by including in it express;

According to the provisions of article 4 of the directive, any advertising form referring to the credit contracts, only in the conditions when they indicate a rate of interest or any other figures referring to the cost of the consumer credit, will include a series of standard information, which are expressly determined. Therefore, the creditor either advertises and does not indicate a rate of interest or any other figures referring to the cost of the credit - but what other argument does he still have to stir the consumer ? – or gives the rate of interest or any other cost related to the credit, to which he will add the rate of interest, any other costs, the total effective value, DAE.

- Information versus formation or modification ; the obligation of pre-contractual information of the consumer by the creditor is carried out by supplying standard information expressly determined, and the obligation of contractual information is carried out by supplying information about the modification of the rate of interest

At a reasonable period before a consumer concludes a consumer credit or accepts an offer, the creditor and the credit intermediary supplies the consumer certain categories of information. According to the stipulations of article 5, the obligation of pre-contractual informing will be carried out by supplying, on paper or on any other medium support the information included in the form „Standard information at European level about the consumer credit", which exists in the Annex II of the Directive.

The information is necessary in order to allow the consumer to compare several offers in order to make an informed decision about the possible conclusion of a credit contract. Additionally to the standard information, at request, the consumer will also be supplied a copy of the project of the credit contract, only if, at the moment of the request, the creditor wants to conclude the credit contract with the consumer. Therefore the creditor will supply standard information to the consumer and even a copy of the project from the contract. And all these prior to the formation of the contract with a reasonable period of time, so that at the moment when the contract is formed, the consumer is fully aware!

- Formation or modification versus credit-worthiness; setting up the creditor's obligation to assess the consumer's credit-worthiness both prior to the formation of the credit contract and prior to the modification of the total value of the credit after the formation of the credit contract;

This time, in order to fulfill this obligation, the creditor will use two sources of getting information, according to article 8: from the consumer and, if necessary, on the grounds of consulting the base of relevant data. Therefore, each member state will ensure, in case of cross-

border credit, the access of the creditors from other Member States to the data bases used in the respective Member State in order to evaluate the consumers' reliability, in non-discriminating conditions, according to article 9. The cross-border credit supposes the exchange of information at European level, the information being included in the negative files which already exist in most Member State. In some Member States there is already the obligation of assessing the consumer's worthiness by consulting the files prior to granting the credit, as a general obligation of prudence towards the consumer, an obligation that can be maintained.

Eccum modo, the consumer credit practices acquire the valences of the creditors' responsibility and that of rendering the consumers responsible, thus predicting a major objective in the scope of the domain of the consumers' protection - combating over indebting.

-Formation versus withdrawal; setting up the consumer's right to withdraw the consent he had given the credit contract;

The right of withdrawing from the credit contract is set up in order to ensure the consumers' protection under circumstances in which the pressure exerted by the creditor might cause a depreciation of his consent. The directive consolidates the juridical protection given the consumers, by setting up, according to article 15, the right of all of the consent given by the consumer when concluding the contract. The term within which the withdrawal right is exerted is of 14 calendar years, within which the consumer can withdraw the consent he had given when the contract was concluded, without indicating any reason. The term begins to run from the day when the credit contract was formed, or from the day when the consumer is informed about the contractual clauses and the standard conditions, in case that day is subsequent to the one shown previously.

The procedure of exerting the right of withdrawal consists in notifying the creditor sent prior to the expiry of the term of 14 days, on paper or on other durable medium. As an effect of exerting the withdrawal right, the consumer has the obligation to refund the creditor the credit – the principal and the due interest from the date when the credit was given until the date when the principal was refunded, without any unjustified delay and not later than 30 calendar days after the notification of exerting the withdrawal right.

- Formation versus anticipated refunding; setting up, auxiliary to the creditor's right of refunding the credit in advance, the limits of the compensations of the creditor, for which transparent and facile rules will be set up;

In case of refunding the credit in advance, the creditor is entitled to a reasonable and objectively justified compensation for the eventual costs related directly to the anticipated refunding of the credit. According to article 16, the compensation cannot be more than 1% of the credit paid in advance, if the period of time between the refunding in advance and the due termination of the contract is more than a year. In case the period is not longer than a year, the compensation cannot be more than 0.5% of the value of the credit paid in advance.

Subsection 7. Selling products and associated warranties

Sedes materiae is the Law 449 from 12.11.2003 related to the sale of the products and of the associated warranties, in force since 01.01.2007, amended and completed. The Law transposes the Directive 1999/44/CE of the European Parliament and of the Council from 25 May 1999 concerning several aspects of the sale of consumer goods and connected warranties[xlviii].

The law regulates aspects related to the sale of products, including the one executed at order, and the warranties associated to it, in order to ensure the consumer's protection. The following means of consumer's protection have been set up by this regulation:

- Obligation of the product delivered to the consumer to comply with the sales contract;

By « seller » is understood the authorized physical or juridical person who, within his activity, sells products in the conditions of a contract concluded with the consumer. The obligation is set up by the article 5 of the Law, according to which it is considered that the products comply with the sales contract if: - they comply with the description made by the seller and have the same qualities as the products that the seller has presented the consumer as a sample or as a model; - they

comply with any specific aim required by the consumer, about which the seller was informed and which he accepted when concluding the sales contract; - they comply with the aims for which the products of the same type are normally used; being of the same type, they have normal performance and quality parameters, which the consumer might expect reasonably, considering the nature of the product and the public statements related to its concrete characteristics, made by the seller, the producer or by his representative, especially by advertising or on the label of the product.

The equivalency of absence of compliance of the products will also be considered the absence resulted from an incorrect setting up of the products, if the setting up is included in the sales contract and if the products have been set up by the seller or on his responsibility or in case the product meant to be set up by the consumer is installed by the latter and the incorrect setting up is due to a deficiency in the setting up instructions.

- Consumers' special rights in case the products are not compliant;

In case of non-compliancy the consumer has the right to have his products made compliant, without any payment, by repair or replacement, depending on his option, or to benefit from the corresponding discount of the price, or may request the termination of the contract.

The Seller's responsibility is engaged if the non-compliance appears within 2 years, calculated after the delivery of the product. The consumer must inform the seller about the absence of compliance within two months after he has noticed it.

- Setting up the obligatory character of the warranty; drawing up of the document and of the obligatory elements included in it at the consumer's request;

The warranty is obligatory from a juridical point of view for the offeror or, in the conditions specified in the declarations related to warranty and in the due advertising and will include mentions about the rights granted the consumer by law. At the consumer's request, the warranty will be offered in writing, on paper or on any other durable medium, available and accessible to him.

Subsection 8 General safety and conformity of the products

Sedes materiae in the domain of the general safety of the products is the Law 245 from 9 June 2004 related to the general safety of the products [xlix] which came into force on 1st January 2005, with the exception of the stipulations about the exchange of information at the community level, which have come into force on 1st January 2007. The Law with modifications and completions is still in force and transposes the Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety[l].

The regulations within the law are applied for all the products for which there are no legal specific regulations for safety[li] and settles measures in view of improving_the operation in conditions of safety for the consumers' life and health in the common market, a zone without frontiers where the free circulation of goods is ensured:

- Regulating the general obligation for the safety of the products;

The Law 245 from 2004 settles, by article 3, for the producers, the general obligation for the safety of the products, which consists in the fact that the producers will introduce in the market only safe products for the consumers' life, health and safety.

The notion of „safe product" is defined according to the stipulations of article 3 in relation to the following landmarks: - normal conditions for use, or reasonably predictable, inclusively durable ones, and, depending on the case, of putting into operation, installation and maintenance necessities; lack of any risk or the existence of only minimal risks, compatible with the use of the product and considered as being acceptable and corresponding to a high level of protection of consumers' health and safety, taking into consideration especially the characteristics of the product – composition, assembly, and, according to the case, setting up and maintenance; their effect on other products, in case when its use together with other products can be reasonably predictable; presentation of the product, its labeling, any warning and instructions about its use or destruction, as well as any other indication or information referring to the product.

A product will be considered safe from the point of view of the aspects regulated by the

dispositions of the national legislation when in the absence of the specific communitarian stipulations about the regulation for the respective product, it meets the Romanian national regulations or of the Member State on whose territory it is sold, established with the observance of the principles of the free circulation of the products and of the market services, and which express requirements of health and safety that the product has to meet in order to be marketed.

A product is considered safe from the point of view of the risks and of the categories of risks settled by the non-obligatory national standards relevant when it meets the non-obligatory national standards which transpose the European standards, whose reference is published in the Official Journal of the European Community. The references for these national standards harmonized are published by the Romanian Standardization Association.

Two other criteria are also express determined by law and used in order to establish whether a product is safe: an objective criteria – the actual stage of the scientific and/or technical knowledge when first introduced on the market; the trader owes the safety accessible technically and that resulting from the scientific progress in the moment when the product was marketed; a subjective criterion – reasonable expectancy of the consumers referring to the general security of the products, a criterion generated by the perception over the safety of the products, of the collectivity expressed publicly, at a certain moment.

The bearer of the general obligation of security is the producer, defined according to the stipulations of article 2, letter *e* from the Law 245 from 2004, in a very extensive meaning.

A product will be considered safe if it meets the regulations with obligatory character, by which are defined its safety characteristics and the modalities of controlling the conformity with the defined parameters, aspects included in the Law concerning the products.

- Producer's obligation to adopt measures proportional to the characteristics of the products that he supplies;

An obligation set up expressly by article 4 of the Law 245 from 2004, adopting measures proportional with the characteristics of the products it supplies, is thus settled that the producers should be informed about the risks the products might present for the consumers and could carry out the appropriate actions, including being able to from the market, the adequate and efficient warning of the consumers, returning from the consumers.

-General obligation for safety of the products, set up in subsidiary to that of the producers, for distributors whose activity does not influence the characteristics of safety of the product;

Although the notion of „distributor" is defined in article 2, letter *f* as being any economic agent from the marketing chain, whose activity does not influence the characteristics of safety of the product, this is also the holder of the safety obligation of the products. The Law 245 from 2004 stipulates that, according to article 6, the distributors are obliged not to distribute the products they do not know or which they should consider, on the grounds of the information held and as experts, not meeting the safety and conformity requirements.

- The producers' and distributors' obligation to inform the consumers about the risks they face by normal or predictable use of the products and to inform the competent authorities;

Set up by article 4, the obligation of informing, which actually results from the general obligation of products safety, means to supply the consumers the information that allow them to assess the inherent risks of a product for an average period of usage, when these cannot be perceived immediately, as well as to prevent such risks.

According to the stipulations of article 5, paragraph 2 and 3 of the Law 245 from 2004, the producers and the distributors have the obligation to immediately inform the competent authorities about the aspect that some products, that they have introduced on the market or that have been supplied in another way to the consumers, present some risks that are incompatible with the requirements of general security, specifying the actions carried out in order to prevent the risks for the consumers.

- Adjusting the punishing regime in relation with the general obligation of

the safety of products;

The responsibility set up for repairing the prejudice caused in the matter of general obligation of the products safety for the producers and distributors results from the general regime of responsibility stipulated by the Romanian Civil Code, but it is a responsibility category, autonomous, of contractual or extra-contractual obligation from which it results.

- Qualifying the institutions that will carry out the supervising and the control concerning the safety;

The consumers' safety depends on the application of the rules concerning the products safety; therefore one must ensure the efficiency of supervising and controlling the market.

An immediate component of supervising the market is that ANPC will permanently inform the consumers about the products and services that present risks for their health and safety or which can affect their economic interests; to apply the complementary measures in the domain of products safety which consist in an adequate checking of the safety characteristics; temporary banning the supply or the exposure of any dangerous product; banning the introduction on the market of a dangerous product; and for a dangerous product existing on the market, withdrawing it and warning the consumers or returning the product from the consumers and destroying it.

Due to the necessity of facing some severe problems connected with the safety of a product that requires a rapid intervention, it was necessary to set up an adequate mechanism which should allow the adoption of measures applicable in the whole Community in order to solve the situations created by the products presenting a major risk, therefore a network of connections at communitarian level has been set up. ANPC participates as national point of contact in the European network of the competent authorities of the Member States of the European Union in the matters of products safety and in this quality it achieves the rapid exchange of information concerning the products and services that present a risk for the consumers' health and safety[lii];

- Setting up the institution for products safety – Commission for products safety;

The Commission for Products Safety was founded, organized and operates according to article 1 from the Order of the president of ANPC no.543 from December 2001 related to setting up, organizing and operation of the Commission for the Products Security[liii]. The Commission has the statute of independent, non-profit consultative organism and is formed of the consumers' representatives of the specialized bodies of the central public administration, representatives of the professional associations and consumers' representatives, in view of representing the non-governmental organizations in the decision-making process, as well as obtaining the best substantiated opinions related to the products harmful for the consumers' life, health or safety.

The competence of the Commission is according to article 4, that of analyzing the notifications related to the risks that the products meant for the consumers might present for evaluation, in order to express a consultative point of view about the characteristics of the product, of the packaging and the setting up and maintenance instructions; the effect on other products with which it might be used; the way in which the product is presented, labeling, directions of use and any other directions and information supplied by the producer; the category of consumers exposed to the risk by using the product. The persons qualified to demand the visa of the commission, namely to consult the commission are: ANPC, the Inter-ministry Committee for Supervising the Market for Products and Services and Consumers' Protection, as well as the instances, to whom their point of view will be sent within maximum 30 days, and which has a consultative character. If it is the case, the commission's point of view will also be transmitted to the specialized bodies of the competent public administration.

Sedes materiae in the domain of conformity of the products is the Law 608 from 2001 related to the evaluation of the products conformity[liv], amended and completed, in force since 8 May 2002. The law regulate, according to article 1, the unitary legal frame for the drawing up of the technical settlements, the assessment of the conformity and supervising the market for the products introduced on the market and/or put into operation in Romania, in the settled domains.

- Obligation of the traders – producers or authorized dealers for the

conformity of the products in the domains settled with the essential requirements stipulated in the technical regulations;

The principle applicable in the matter is, according to article 2 from the Law 608 from 2001, that the products from the domains settled are introduced on the market and/or put into operation only after their conformity has been assessed according to the applicable assessment procedure and if it has the conformity marking. In article 10, paragraph 2 is stipulated for the traders from the settled domains the obligation of conformity of the products with the essential requirements stipulated in the technical regulations. The conformity of the product with the contract is established separately from this domain through the regulations concerning the sale and the associated warranties.

The holder of the obligation shown ut *supra* is, according to article. 4, paragraph 1„the producer", a notion that is defined by law extensively, as being the physical or legal authorized person, responsible for designing and manufacturing a product, in order to introduce it and/or put into operation, in Romania or in a Member State of the European Union, in its name. The producer's responsibilities are applied to any authorized physical or legal person that assemblies, packages or labels the products in order to introduce them on the market and/or commission them, in its own name. The authorized representative of the producer is the physical or legal person having the registered address, respectively the headquarters in Romania or in a Member State of the Union, empowered by the producer to operate in its name. According to article 11, in case neither the producer nor his authorized representative have the domicile, respectively the registered address in Romania or in a Member State of the Union, the responsibility concerning the conformity and presentation of these documents, on demand, to the authorities responsible with supervising the market, belongs to the importer.

The document attesting the conformity of the products with the essential requirements is according to article 12 of the Law 608 from 2001, the declaration of conformity drawn up by the producer or by his authorized representative.

The evaluation of the conformity of the products from the regulated domains with the essential requirements stipulated in the technical regulations is carried out according to the stipulations of article 13 by independent certifying bodies, by reference to the degree of complexity of the product and to the risk estimated for using it.

The globalization of the production and marketing activities and the multiplication of the number of the actors participating in this process increase the risks and distortions in ensuring the products safety, therefore the consumers' life and health might be affected. The regulations for the consumers' protection are, therefore a must that is omnipresent in any consumerist legislation, therefore in the Consumer Law from Romania as well, which has created the means and procedures necessary for the consumers' protection at internal and cross-border level.

Subsection 9. Unfair commercial practices and ways to cease the unlawful practices in respect of the protection of consumers' collective interests

Sedes materiae is the Law 363 from 21.12.2007 related to combating the unfair practices of the sellers in relation with the consumers and harmonizing the regulations with the European legislation concerning the consumers' protection[lv]. The Law has been in force since 31 December and transposes the Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation 2006/2004 of the European Parliament and of the Council. The development of fair commercial practices on the common market is essential for facilitating the extent of cross-border activities, but the legislations of the Member States have essential differences in relation with the commercial practices, which might entail distortions of competition, therefore it was necessary to establish common rules to protect the consumers.

- Setting up the ban of the unfair commercial practices;

The notion of „business-to-consumer commercial practices" is defined as any action, commission, behavior, measure or commercial presentation including advertising and selling,

carried out in strict connection with promoting, selling or supplying a product to the consumers. The unfair commercial practices used prior to or concomitantly with the drawing up of the contract or during the period when the contract is executed are banned. A commercial practice is unfair if:
-it is contrary to the requirements of the professional diligence;
- it alters or is susceptible to alter essentially the economic behavior of the average consumer to whom it reaches or to whom it addresses, or to any average member of the group, when a commercial practice addresses a certain group of consumers. The commercial practices that might alter essentially the economic behavior of a vulnerable group of consumers, that can be clearly identified, must be assessed from the perspective of the average member of the group. The group of consumers is mainly vulnerable to the respective practice or to the product it refers to, from reasons of mental or physical disability, of age or credulity, whose economic behavior can be easily predicted by the trader. The unfair commercial practices are, especially the misleading and aggressive ones.

By using the juridical technique of the annex list, this includes the List of the commercial practices which, in any circumstances, are considered unfair, which include misleading commercial practices and aggressive commercial practices. Because the information included in the legislation, which refer to commercial advertising, including advertising or selling, are appreciated as being essential, a non-limitative list of the normative documents settling the rules related to advertising and information is included in the annex 2.

- Setting up complementary measures for the main sanction;

Both the instance and ANPC, expressly qualified in this domain, will apply, by emergency procedure, even without the existence of a proof of loss or affective prejudice or the intention or negligence of the trader, complementary measures from those constantly settled in the domain, which consist in ceasing the unfair commercial practices; publishing the final and irrevocable judgment by which the ban was set; publishing a rectifying communicate.

- Setting up the procedural means of reverting the proof ;

In order to prove the commercial practice carried out, the traders must supply proofs related to the exactness of their affirmations and are obliged, when ANPC or the instance requires, to place at their disposal the documents that will prove what has been declared. In case the documents are not supplied within the term established by the solicitants, or if they are considered insufficient, the respective affirmations are considered to be inexact.

Sedes materiae of the ways to stop the unlawful practices in respect of the protection of consumers collective interests is the Romania's Government Decision no. 1553 of 2004 on some modalities to prevent the unlawful practices in respect of the collective interests protection in force since 01.01.2007 which transposes in the national legislation the European Directive no. 98/27/CE on injunctions for the protection of consumers' interests as amended and completed by the Directive 99/44 of May 25, 1999, Directive 2000/31 of June 8, 2000 and Directive 2002/65 of September 23, 2002.

The course of action enforced by the above act is enabling the consumers association to promote injections against unlawful practices with a view to protecting the consumer's collective interests. According to clause 1, the decision aims at putting an end to the unlawful practices and activities provided for in the act enclosed to the annex which is part of its body text, with a view to increasing the protection level of the consumers collective interests and with a view to improving the legal relationships between the consumers and the traders. The annex to the Decision lists the acts, the breach of which, by either actions or lack of actions, would affect the consumer's collective interests and represent unlawful practices. These acts are those relating to the fields of: publicity, abusive clauses, trading of travel services packages, distance contracts, contracts concluded outside the commercial sites, time share, consumer credit contracts, the conclusion and execution of the distance contracts regarding the financial services; e-commerce, audiovisual.

Article 3 ensures that, in certain fields where consumer protection is enacted, certain authorities are competent in receiving and solving the petitions lodged by consumers through the enabled organizations, with regards to the commitment of unlawful acts that affect the consumers'

collective interests, as well as in the surveillance and punishing of the cases when consumer's rights are breached.

In order to stop, limit or cancel the effects caused by illicit practice, it is required to inform the consumers using any public information method. The informing procedure will be materialized in the publishing, at the expense of the offender, of one or several rectifying notes, establishing the content and means of distribution and/or publication. The decision sets up the procedure previous to the intimation of the competent Romanian authorities by an enabled organization of an European Union country, which also represents the collective interests of the consumers harmed by a Romanian economic agent, which means that the competent organization will address the person reputed to being guilty of committing the illicit act, and requesting that it stops. The effectiveness of this remedy depends on the existence of strong consumers' associations that would take it over themselves to promote such actions.

Section III. Conclusive landmarks.

The basis of the Consumer Law in Romania are, essentially, the regulations having a character of generality, as well as the specific ones from the domains that have been shown, by which different means of consumers'.

The consumer is protected by regulations at all the contractual stages, even at those of an optional nature, such as advertising both prior to the preparation and at the moment of the contract preparation and execution. A special care is shown by the legislator with regards a consent of the consumer given to the best of its knowledge based on a prior mandatory briefing which in all cases has a pre-established content, adjusted to the specific needs generated for instance by the means of communication utilized in drafting the contract or by the special subject matter of the contract.

Moreover, it is both forbidden and sanctioned the abuse of the trader exercised by imposing either non-negotiated or insufficiently negotiated clauses which entail a significant misbalance between the parties' rights and obligations to the detriment of the consumer. On grounds related to removing the abuse, such clauses will be sanctioned by lack of effectiveness.

At the time of the preparation, the consumer may reconsider the consent or the law may create the means in this respect. It is legally marked the aspect relating to the compliance of the product with the contract so that the consumer's expectancy on the acquired product be reached. At the stage of the contract execution, the consumer is protected again: the right of the consumer to refund the credit in advance. In an ostentatious manner, the formalism goes across all the regulations on the consumer's right as it is instituted on protective grounds in all the fields where protection is ensured.

At either of the above stages, as an outcome on protection, the unlawful practices are also punished, and in terms of courses of action the consumers' associations are entitled to promote actions for the cessation of such practices. Moreover, notwithstanding the individual person's connection to a contract or its position of "consumer", it is protected by the establishing of the general obligation of the products safety even since the product was first released on the market, as well as by the establishing of the autonomous liability, independent of the guilt in respect of the damages caused by the faulty products.

Relevant organs and organisms with general and special proficiency have been created with a view to them exercising prevention, verification and control, to enforcing sanctions of main or subsidiary nature. The main sanctions linger under the conventionalism and the creation of complementary sanction is a constancy of the consumers' protection policy.

The consumer's right in Romania created its own framework characterized by imperatives and demands created in the above shown consumers' means of protection. Some of these rules are common rules which govern the contracts concluded with the consumers.

Including the norms of public right and of private right, some being s*ui generis*, the consumer law is, in Romania, a contemporary creation. Under the aspect of the systemic character of the regulations, included in this branch of law, at this moment it is obvious that there is an ensemble of juridical norms specific for the domain, although the created system is composite, as

regarded from the light of the diversity, multitude and complexity of its components it has the same nature as the system created in the other Member States of the European Union. The historical determinations that have affected the Law system, its continuous construction and reconstruction, the contemporariness of the consumer law in Romania justify the considerably restricted consumerist jurisprudence.

The consumer Law is in Romania a branch of the law transcending the classical divisions of law, acquiring a pluridisciplinary character; although it isn't two decades old yet, the consumer law tends *prima facie* towards perfecting the norms included in it. In fact, the physiognomy of the consumer law fully justifies its existence as a branch in permanent formation.

Characterized by the excess of regulations, sometimes redundant, by its imperatives meant for the traders and adapted to the necessity of protecting the "weaker part", by obvious avantguardism, in relation with the civil law and the commercial law, it circumscribes in an essential manner the limits of the contractual liberty, competing for its dissolution, and the liability under the consumers' protection norms rises above the outline of the contract.

As it was observed, the consumer law erodes the contract by alteration of the immutable principles of its formation. However, having a surprising evolution, it has unloosed without any pains or regrets from the traditional ties of the civil law and of the commercial law, creating its own determinations, by amplifying and specializing the regime of the responsibility, by the sanctions that are established in relation with three commandments "efficiency, proportionality and dissuasiveness".

At this moment there is in Romania a coherent regulating frame in the domain of consumers' protection. The decreed norms outrun reality, which will have to adapt.

Consumer Law in Romania is a product of the present, born somehow under the burden of the past and definitely under the pressure of the future.

[i]Ph.D in comercial law of the Babes-Bolyai University from Cluj Napoca, România, North University, Baia Mare, România, Faculty of Sciences, Department for Economic Disciplines , lawyer.

[ii] "Consumer credit -Protection of Consumers economic interests".

[iii]"Judicial protection of the Consumers – Consumer credit and Connected Domains". The list of bibliography consulted when drawing-up this monograph was also the base of this study, and it is available at www.sferajurica.ro

[iv]both published at Sfera P.H. Cluj Napoca, Romania.

[v]the system of Romanian law is characterized by the duality of the private law, civil law and commercial law.

[vi]N. Sauphanor, in "L'influence du droit de la consommation sur le système juridique", L.G.D.J.,Paris, 2000, p. 2-3.

[vii]The regulations set up in Romania in the dark period 1945 – 1989 abounded, paradoxically, in the characteristic demagogical spirit, in norms which, declaratively, ensured, the consumers' protection in a de facto background of a shortage of products and services; of the uniformization of the typology of product as a result of the drastic reduction of imports; of a doubtful quality of the autochthonous product s due to the absence of competition. A veridical fresco of the period can be found in Saul Bellow, „Deans' December".

[viii] All normative documents that are submitted to analysis are in force on 8.05.2008 and we will analyze them according to the content they have at this date, by showing the Official Monitor,from now on. M.Of. where it was published, the date when it came into force, and the communitarian document , from Official Journal of the European Community , J.O.from now on,which transposes it in the national legislation..Some of the normative documents discussed have suffered in time amendments and completions, the last amendment being done on 21.12.2007 by the Law 363 for combating the traders/marketers' incorrect practices in their relations with the consumers and harmonizing the regulations with the European legislation concerning the consumer protection, which were republished in M.Of.

[ix]The lacunose jurisprudence is marked by the solutions given in a single category of causes – the complaints against the contravention reports by which punishments are applied for non-observance of the normative documents in the domain of consumer protection.

[x]published in M.Of.212 from 28.08.1992, approved by law, amended and completed, named OG 21 from 1992 from now on.

[xi] J. Calais-Auloy, F. Steinmetz,"Droit de la consommation", 5ème édition, Dalloz, Paris, 2000.p. 20.

[xii]named ANPC from now on.

[xiii]at this date in force since 18 July 2007 Decision of the Romanian Government 748 from 11.07.2007, published in M.Of. 480 from 18.07.2007.

[xiv]published in M.Of.442 from 1.09.2000., approved by law, amended and completed.

[xv]published in 593 from 1.07.2004, amended and completed, named Consumer Code from Romania, from now on.

[xvi]similar to the French model.

[xvii]published in M. Of. no. 359 from 02.08.2000.

[xviii]published in J.O. no. L 250 from 19.09.1984.

[xix]published in J.O. no. L 290 from 23.10.1997.

[xx]J. Calais-Auloy, F. Steinmetz, "Droit de la consommation", 5ème édition, Dalloz.p. 7.

[xxi] J. Blythe, „The consumer's behavior" Teora PH,Bucureşti1998,.p. 216.

[xxii]named C.N.A. from now on.

[xxiii]published in M.Of. no. 197 from 18.08.1993, which has been in force since the same date.

[xxiv] published in J.O.C.E. no L 80, from 18.03.1998.

[xxv]J. Calais-Auloy, F. Steinmetz , "Droit de la consommation", 5ème édition, Dalloz, Paris, 2000,p.83.

[xxvi]published in M. Of. no 431 from 31.08.1999, republished in M.Of. 168 din 5.03.2008.

[xxvii] published in J.O. no.. L 372 from 31.12.1985.

[xxviii]published in M. Of. no. 431 from 02.09.2000,republishd in M.Of.177 din 7.03.2008.

[xxix]published in M. Of. no. 796 from 28.08.2004.

[xxx]published in J.O. no. L 144 from 04.06.1997.

[xxxi]published in J.O. nro L 271 from 09.10.2002.

[xxxii]M. Van Huffel, "Services financiers et contrats conclus à distance", in Revue europeenne de la droit de la consommation, 1/1997, p. 33-49.

[xxxiii]published in J.O. no. L 95 from 21.04.1993.

[xxxiv]published in M. Of. no 4 from 07.01.2002.

[xxxv] published in M.Of no.431 from 31.08.1990, republished in M.Of. 387 from 31.12.2007

[xxxvi] published in J. O. L 158 from 23 June 1990.

[xxxvii]published in M. Of. no. 580 din 30.06.2004.

[xxxviii]published in JO L 280, 29.10.1994.

[xxxix] F. Garron, La protection du consommateur sur le marché européen des droits de séjour à temps partagé,Revue europeenne de la droit de la consommation, 2/2003, p. 225-228

[xl]J. J. M. Lopez, Contrats et clauses abusives, Revue europeenne de la droit de la consommation, 2/1998, p. 135-136.

[xli] published in M.Of.611 from 6.07.2004. The norm for application of the Law 289 from 2004 details the aspects connected with the application of the normative document. The Law was republished in the M.Of.319 from 23.04.2008

[xlii] published in J.O. 042 from 12.02.1987.

[xliii]published in J.O.. C 331 E from 31.12.2002.

[xliv]at the date of the analysis of the norms from the content of the Law 289 from 2004 „Consumer credit -Protection of Consumers economic interests" and "Judicial protection of the Consumers – Consumer credit and Connected Domains" already existed since 2002, the respective Proposal of directive in the matter, the content of the norms from the national regulations was compared both to the directive and to the proposal

[xlv]from now on as BNR.

[xlvi] referred to as „dobanda anuala efectiva" DAE from now on, in Romanian.

[xlvii]The national regulatory frame include : procedure of insolvency by the Law 85 from 2006 , published in M.Of. 359 from 21.04.2006, procedure of juridical reorganising and bankrupcy of the credit institutions – Order of the Romanian Government 10 from 2004, published in M. Of. 84 from 30.01.2004, procedure of financial recovery and bankrupcy of the insurance companies – Law 503 from 2004,published in M. Of. no.1193 from 14.12.2004.

[xlviii] published in J. O. no. L 171 from 7 .07. 1999

[xlix]published in M. Of. no 565 from 25.06.2004.

[l]published in J.O. no. L 011 from 15.01.2000.At national level there are also vertical settlements, out of which, *exempli gratia* we mention: O.G. no.42 from 29.01.2004, about organizing the sanitary-veterinary activity and for the safety of food, modified and completed; OUG no. 97 from 21.06.2001 about settling production, circulation and marketing the food; H.G. no.187 from March 17, 2000 related to the imitations of foods presenting the risk of endangering the consumers' health and safety; H.G. No.396 from April 2 2003, There are also settled specialized bodies that have competences for prior authorizing the traders, verification and control, such as, in the domain of alimentary products, the National Sanitary and Veterinary Authority and for the Safety of Food.

[li]services are excluded from the domain of application of the law, their safety being included in the settlement that has a general character – Order of the Romanian Government 21 from 1992.

[lii]the operation in the network is carried out in coordination with the other existing communitarian procedures, especially the Rapid Alert Sistem- RAPEX procedure, whose object is, mainly: to facilitate the exchange of information related to evaluation of the risks, dangerous products, testing methods and results, recent scientific development as well as other aspects that must be taken into consideration for control activities; to settle and carry out some common projects for supervising and testing; exchanges of expertise and of better practices and cooperation for formation activities; to improve the cooperation at communitarian level related to marking, withdrawal and returning dangerous products.

[liii]published in M. Of. no. 4 from 07.01.2002 .

[liv]published in M.Of. no.712 from 8.11.2001, republished in M.Of. no.313 from 6.04.2006.

[lv]published in M. Of. no. 899 from 28.12.2007.