

Approaching approximation of the legislation of the Republic of Moldova in the field of consumer protection to the EU acquis

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**Approaching approximation of the legislation of the
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protection to the EU acquis**

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I. Brief description of the situation in the field of consumer protection

While international consumerism is going through a new stage, which offers it more rights, freedoms, but also greater responsibilities, the consumer from the Republic of Moldova has a much more difficult mission: that of moving into a short period of time, at an alert pace, through the consumerist stage of the old concept, so that it can then integrate, without difficulties, into the global profile movement, bringing its contribution to the common efforts to stimulate the sustainable development of nations. However, does consumerism currently have the necessary leverage to make this "leap" in time? Taking as a premise the beneficial changes taking place in the local environment, the attention given by the state to the implementation of protective programs and the increasingly intense involvement of non-governmental organizations in preventive and reparative actions, we can say with certainty that yes.

Therefore, consumer protection in the Republic of Moldova appeared as a response to the situation in which the consumer finds himself facing an abundance of goods and services on a constantly expanding market, which, besides the advantages it offers, also creates multiple difficulties. The consumer is no longer the buyer of yesteryear, purchasing goods on a small market or mass-produced, but he has become an element of mass consumption, subject to advertising campaigns and pressure from groups of producers and distributors, who control and determine the functioning of the market. The consumer no longer plays the role of balance in consumption relationships.

It has become a tool that manufacturers (distributors, transporters, traders, etc.) use to obtain the highest possible profits for an inappropriate product or service. On the other hand, the need for rapid trade has imposed the standardization of contracts, the emergence of standard contracts, so that the traditional principles applicable to the contract, namely autonomy of will and equality of contractual parties, no longer find their place in the new era of the consumer society. The consumer no longer negotiates the conclusion of the contract and, if he could, he does not have the necessary legal and technical competence, he does not have the information useful to understand the factors likely to guide his choice. He has only one alternative: to agree or not with the contract that the professional proposes to him. The state of "powerlessness" in which the consumer finds himself in his relationship with the economic agent, the financial and legal impossibility to face him from an equal position require the protection of the weak party, of the consumer, by developing a special legislation that would regulate the consumer protection mechanism as a whole.¹²

Consumer protection in the Republic of Moldova is the most important area, given that every day citizens benefit from services and goods. Currently, the legal framework of the Republic of Moldova

¹ Ioan Macovei, *Institutions in Right Trade International*. – Iași: Junimea, 1987, p.222-223.

² Olesia Plotnic, Violet Cojocaru, *Protection Consumer in Republic Moldova through Prism Regulations European*, Magazine National of Straight, Number 7-8(118) / 2010 / ISSN 1811-0770, p.56-60

created as a result of the transposition of a number of directives has generated a detailed and voluminous number of normative / legislative acts in the field of private law in the Republic of Moldova.

Also, the main law in the field, the Law on Consumer Protection nr. 105 of 13.03.2003 (amended and supplemented several times in the last 20 years in connection with reorganizations of institutions, harmonization of European legislation, modernization of the Civil Code, etc.), was completed by a list of other special laws and Government decisions.

Moreover, with the entry into force of the latest amendments to the Civil Code (March 1, 2019), Law no. 256/2009 on unfair terms in contracts concluded with consumers and Law no. 8/2016 on consumer rights when concluding contracts has been repealed, their provisions being transferred in a broad sense to the Civil Code, producing protectionist effects including to professionals, especially as regards the nullity of unfair terms in adhesion contracts.

Despite recent improvements to consumer law, its alignment with the EU acquis is still insufficient. According to the European Commission's analytical report on Moldova's compliance with the EU acquis, Moldova has made some progress in consumer and health protection, scoring 2 on a scale of 1 to 5, namely: *"³Moldova's Consumer Protection Law is partially aligned with the EU acquis. It lays down general requirements for consumer protection and the framework for unrestricted access to products and services. It also protects consumers' rights and interests in case of unfair commercial practices by allowing them to participate in decisions affecting them, and regulates aspects of the sale of products and related guarantees. It also covers the conditions under which authorities responsible for enforcing and protecting consumers' interests cooperate across borders. The law is not aligned with the EU acquis on consumer protection cooperation, which lists the minimum investigation and enforcement powers of competent authorities. It is also not aligned with the acquis on out-of-court dispute resolution"*. ⁴

However, Moldova needs to fully align its consumer protection and public health legislation with the EU acquis and, more importantly, implement these regulations. As in other areas, the effective implementation of consumer law is a significant challenge. This challenge is evident in the limited visibility of the primary institution responsible for consumer protection, inadequate consumer education and a high presence of products placed on the market that do not meet quality standards.

II. Timeliness of the issue

Currently, in the Republic of Moldova the field of consumer protection is in a double and contradictory regulation:

³ https://neighbourhood-enlargement.ec.europa.eu/commission-analytical-report-moldovas-alignment-eu-acquis_en

⁴ Page 22, Ibid.

- *On the one hand*, in special laws (Law No 105/2003, Law No 202/2012) favourable to the protection of consumers' interests based on the principle of inferiority and the need to balance their rights vis-à-vis professionals,
- *On the other hand*, in the rules of ordinary law (Civil Code), which are based on common law rules for consumer protection that place the consumer on an equal footing with professionals, although the consumer is a vulnerable part of the contract through the social, economic, legal factor. (Law no. 8/2016 on consumer rights when concluding contracts and Law no. 256/2012 on unfair terms in consumer contracts being repealed with the entry into force of the amendments to the Civil Code.)

As regards the assessment of unfair terms, the legislative "basis" for assessing the unfair nature of contract terms concluded with consumers would be the Consumer Protection Law nr. 105/2003 and the Civil Code, allowing a double regulation of the institution of unfair terms.

At the same time, according to the analytical report of the European Commission on Moldova's alignment with the EU acquis (2023), Moldova has certain arrears in transposing the EU acquis, and Moldova's legal framework on product safety is partially aligned with the EU acquis.⁵

III. EU consumer protection areas and latest EU consumer space changes

Consumer protection is one of the most tangible areas of EU policy for citizens, covering a wide range of their daily activities, from the way prices are displayed in shops to roaming charges, electricity bills and rules on returning defective products. Since mid-2014, the EU has developed a number of policy initiatives to improve the enforcement of consumer rights and product safety and compliance in the internal market, as follows:

<u>Review of EU consumer law</u>	<u>Consumer contract law</u>
Update of rules related to consumer rights; relevant directives, fitness check, public consultation and results, and the New Deal for Consumers ⁶ , namely: <ul style="list-style-type: none"> - Fitness Check of EU consumer law on digital fairness (<u>Unfair Commercial Practices Directive</u>, <u>Consumer Rights Directive</u> and <u>Unfair Contract Terms Directive</u>) - New Deal for Consumers (<u>Directive on better enforcement and modernization of EU</u> 	EU consumer protection legislation dealing with B2C contractual issues such as the right of withdrawal, legal guarantee and unfair contract terms ⁷ namely: <ul style="list-style-type: none"> - <u>Consumer rights directive</u>: Rules on consumer information, right of withdrawal and other contractual issues. Guidance on the Directive and its review; - <u>Consumer sales and guarantees</u>: Rules on consumer remedies and guarantees in the

⁵ https://neighbourhood-enlargement.ec.europa.eu/commission-analytical-report-moldovas-alignment-eu-acquis_en

⁶ https://commission.europa.eu/law/law-topic/consumer-protection-law/review-eu-consumer-law_en

⁷ https://commission.europa.eu/law/law-topic/consumer-protection-law/consumer-contract-law_en

<p>consumer protection and <u>Directive on Representative Actions</u>)</p> <p>- Impact assessment and evaluation (Fitness Check: Impact assessment - New Deal for Consumers; Summary of the Impact Assessment - New Deal for Consumers; Inception impact assessment for the targeted revision of consumer law directives)</p>	<p>sale of goods and the supply of digital content and digital services;</p> <p>- <u>Rules promoting the repair of goods:</u> Promoting repair improves the sustainable consumption of goods by consumers;</p> <p>- <u>Unfair contract terms directive:</u> Details of an EU law related to the language of consumer contracts that aims to prevent imbalances in the rights consumers and sellers/suppliers.</p>
<p><u>Unfair commercial practices law</u></p>	<p><u>Travel and timeshare law</u></p>
<p>EU legislation to protect consumers. Price indication and unfair commercial practices directives⁸, namely:</p> <p>- <u>Misleading and comparative advertising directive:</u> Objective and scope of the EU law to protect traders (B2B and B2C) against misleading advertising;</p> <p>- <u>Price indication directive:</u> Rules on the indication of the selling price, the price per unit and price reductions of consumer goods;</p> <p>- <u>Unfair commercial practices directive:</u> EU rules to protect consumers from unfair practices before, during and after a commercial transaction.</p>	<p>EU laws on package travel and timeshare contracts⁹, namely:</p> <p>- <u>National transposition measures for the Package Travel Directive:</u> Texts of the national transposition measures for the Package Travel Directive (EU) 2015/2302, as provided by the Member States;</p> <p>- <u>Package travel directive:</u> The EU law protecting consumers who purchase package holidays organised by tour operators and other forms of combined travel;</p> <p>- <u>Timeshare directive:</u> The EU law regulating timeshare contracts, long-term holiday products and resale and exchange contracts.</p>
<p><u>Representative Actions Directive</u></p>	<p><u>Consumer protection cooperation regulation</u></p>
<p>The Injunctions Directive and Representative Actions Directive ensure the defence of collective interests of consumers in the internal market¹⁰.</p>	<p>About the EU law that addresses breaches of consumer rules when the trader and the consumer are in different countries¹¹.</p>

The current Consumer Programme is discontinued under the MFF 2020-2027 proposal. Instead, consumer actions are to be included in a new Single Market Programme under heading 1: Single Market, Innovation and Digital. The new programme aims to consolidate a number of previously separately funded activities. It brings together 17 programmes and actions financed by the current MFF,

⁸ https://commission.europa.eu/law/law-topic/consumer-protection-law/unfair-commercial-practices-law_en

⁹ https://commission.europa.eu/law/law-topic/consumer-protection-law/travel-and-timeshare-law_en

¹⁰ https://commission.europa.eu/law/law-topic/consumer-protection-law/representative-actions-directive_en

¹¹ https://commission.europa.eu/law/law-topic/consumer-protection-law/consumer-protection-cooperation-regulation_en

two new initiatives and eight commitments undertaken by the Commission in the meantime, including the New Deal for Consumers, the reform of market surveillance and a new framework for type-approval and market surveillance of motor vehicles. The Commission argues that bringing all these areas together in one programme would minimise overlaps and improve cooperation.

IV. Options for approximation of the legislation of the Republic of Moldova on consumer protection to the EU acquis

A. Short-term option: HARMONIZATION of consumerist legislation according to the Analytical Report of the European Commission on the alignment of the Republic of Moldova with the EU acquis (2023), namely:

- Directive on better enforcement and modernisation of Union consumer protection rules.¹²
- Directive on representative actions.¹³
- Directive on the supply of digital content and digital services.¹⁴

B. Medium-term option: STANDARDIZATION of the national framework by excluding dualistic and contradictory regulations, namely:

- Amendment of the Civil Code by standardizing the notion of consumer to the special legislation (Law no.105 of 13.03.2003), according to which the consumer can only be a natural person.¹⁵
- Exclusion of special consumer protection rules from common law, while maintaining them in consumer protection law.
- Review of other normative acts regulating the notion of consumer, especially in the energy sector (household consumer and non-household consumer, which is assimilated to professionalism, etc.)

C. Long-term option: UNITY of the consumer protection framework by adopting a new organic law (Consumer Code), namely:

- Consolidating consumer protection rules into a Consumer Code is an important step forward and a major effort for consumers. In order to effectively exercise his legal rights, the consumer will refer to a Code with uniform rules for his interests: on health safety and economic interests;

¹² <https://eur-lex.europa.eu/eli/dir/2019/2161/oj>

¹³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020L1828>

¹⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L0770>

¹⁵ **Article 3. Consumer AND The professional one** (Civil Code of the Republic of Moldova)

(1) Any natural person who, in the Framework of a civil law relationship, acts predominantly for purposes that I do not keep from the activity of entrepreneur or professional, has the status of consumer. The person's physics does not have the status of consumer if the Other Party to the Civil Legal Report does not have the status of professional.

(2) Any person, natural or legal, public or direct, private, who, in the Framework of a civil law relationship, acts for purposes that preserve the activity of the entrepreneur or professional, even if the person does not aim to obtain a profit from this activity, has the status of professional.

(3) *The person who Report civil law, Match So long ago with Alina's provisions. (1), how much and supplies Alina. Paragraph 2 considers a consumer if recognition of this status provides him with some legal protection, again, in other cases, the person considers himself to be professional.*

- Best practices on the latest legislative developments at international and European level, in particular: French Consumer Code; Italian consumer code; Dutch Consumer Code, Romanian Consumer Code, etc.; European law – in particular the directives on private law and consumer protection.

The purpose of promoting a Consumer Code is:

- a) modernization of private law in the Republic of Moldova, according to the latest European and international trends in the field;
- b) to make consumerist legislation more precise and unified;
- c) better regulate consumer rights and the obligations of their economic operators;
- d) to better protect the validity of consumer contracts;
- e) empowerment of legal persons governed by private law vis-à-vis consumers.

Benefits of implementing a Consumer Code.

Why is a Consumer Code necessary in the Republic of Moldova? The imbalance between professionals and consumers worsened in the second half of the twentieth century, due to the increase in the size of companies, the complexity of products and services placed on the market, the emergence of marketing science, the ubiquity of advertising and credit development. The economic boom was accompanied by numerous abuses suffered by consumers and, in particular, the weakest among them (children, the elderly and people with visual, hearing, mobility impairments).

In order to combat these abuses, the common law resulting from the Civil Code proved to be insufficient and ineffective. By virtue of the principle of autonomy of will, a person is obliged to comply with the provisions of the contract when contracting it, and the few remedies extracted from the Civil Code (defects in consent, warranty against defects, etc.) are of little importance in relation to the priorities of consumers to be exempted from state duty, the presumption of innocence of the consumer, in case of doubt - the interpretation of terms in favor of consumers etc.

By comparison, the French legislature has intervened, since the sixties, to establish new rules designed to protect consumers. It has been guided by reasons deriving from justice: law is created to protect people in a situation of weakness. It was also guided for reasons of efficiency: an economic system cannot function properly if one partner is at the mercy of the other. Thus, over the past sixty years, the law of consumption has been formed in France, as in all market economy countries.

VI. Proposal for a Government Action Plan for 2024

Examining the legal framework regulating consumer rights in the Republic of Moldova, we can establish with certainty that it is necessary to repeal Law no. 105/2003 and establish the unification of norms spread in different normative acts, in a single act - the Consumer Code - following the example of French, Romanian and most European states.

The legislation on consumer protection, and in particular the fight against unfair terms, unfair commercial practices, as it appears in the Republic of Moldova, is not satisfactory, as it consists of a multitude of texts without any concern for coherence, unity, uniformity and harmonisation.

Thus, several texts, laws of Parliament and Government decisions regulate in various forms the protection of consumers' interests, for example in the field of electricity, water, etc. So, the rules are difficult and complex for consumers, even legal professionals, to know and understand them, including the new Civil Code.

The codification of consumer protection legislation is also even more necessary in the European single market provided for by the EU-Moldova Association Agreement. Respectively, the Government of the Republic of Moldova can play a crucial role in this issue if it develops a Consumer Code by unifying consumer norms.

A Consumer Code serves as a comprehensive and consolidated legal framework designed to regulate and protect consumer rights within a legal system. This specialized legislation offers several distinct advantages:

Clarity and accessibility: A Consumer Code consolidates various consumer laws and regulations into one easily accessible document. This clarity reduces confusion and promotes transparency, ensuring that consumers, businesses and legal professionals can easily understand their rights and obligations.

Comprehensive coverage: A well-structured Consumer Code can comprehensively cover a wide range of consumer-related issues, including contract conditions, product safety, advertising practices, dispute resolution mechanisms and more. This comprehensive coverage reduces the need for consumers to navigate a complex web of separate laws and regulations.

Consistency and uniformity: By unifying consumer protection rules, a Consumer Code promotes consistency and uniformity in interpretations and application of the law. This consistency increases legal predictability, reduces ambiguity in disputes and ensures that similar situations are dealt with in a consistent manner.

Efficient judicial processes: courts can better interpret and apply consumer laws when they are consolidated into a single code. This efficiency leads to faster and more predictable judicial processes, benefiting both consumers seeking justice and businesses seeking compliance.

Legal certainty: A Consumer Code provides a clear legal framework outlining the rights and responsibilities of both consumers and businesses. This legal certainty is essential to promote fair commercial practices and foster consumer confidence in the market.

Adaptability: A Consumer Code may include mechanisms to address emerging consumer protection issues and market trends. This adaptability allows the legal framework to evolve with changing consumer needs and technological advances.

Empowering consumers: A well-developed Consumer Code empowers consumers by clearly articulating rights and remedies. This empowerment encourages consumers to assert their rights and hold businesses accountable for any infringement.

Harmonization with international standards: many countries adopt consumption codes in line with international standards and best practices. Such harmonisation can facilitate international trade and cooperation, as businesses and consumers alike can rely on consistent principles when engaging in cross-border transactions.

Simplicity of legislative changes: When updates or changes are needed, a consolidated Consumer Code simplifies the process. Instead of amending several separate laws, lawmakers can focus on amending a single code, making the legislative process more efficient.

Public awareness and education: A Consumer Code can serve as a valuable educational tool, helping consumers understand their rights and responsibilities. Public awareness campaigns and educational initiatives can be built around the principles outlined in the Code.

In essence, a well-drafted Consumer Code improves consumer protection, promotes fair business practices and contributes to a more transparent and efficient market, all while streamlining legal processes and encouraging legal predictability.

V. Conclusions

While international consumerism is entering a new stage, offering consumers more rights, freedoms and opportunities, as well as great responsibilities, it must be recognized that the mission of consumer protection in the Republic of Moldova is more difficult by diversifying the norms of different normative / legislative acts. This implies the rapid transition from the consumerist stage (in the old conception) to the global consumer movement without difficulty, thus contributing to strengthening the joint efforts of the European community to ensure international consumer protection.

It is necessary to note that for the near future of Moldovan legislation in the dedicated field, the consolidation of all acts into a single act is inevitable - a Consumer Code, following the example of other European countries that have demonstrated through this codification a high level of consumer protection in various fields.

Harmonisation, uniformity and unity through codification of consumer law are particularly important elements for creating and strengthening a thriving and fair society. These terms describe the process

by which the various rules, norms and legal provisions aimed at protecting consumer rights are brought together and aligned in a coherent and comprehensive document, known as the Consumer Code.

Alignment and consistency between different laws and regulations affecting consumer rights will help eliminate discrepancies and contradictions between existing rules, ensuring that they all fit together into a coherent and logical framework. This makes it easier for everyone involved, from consumers to regulators, to understand and enforce the rules.

The requirements for approximation of consumer protection legislation to the European acquis indicate the need for consumer protection rules to be applied consistently throughout the jurisdiction. This means that regardless of where or in what area a consumer exercises his rights, the same principles and standards will be applied, so uniformity will reduce ambiguity and contribute to more effective and equitable enforcement of the law.

However, bringing together all relevant aspects of consumer protection legislation in a single central document, i.e. the Consumer Code, will involve identifying and synthesizing all existing rules and including them in a logical and comprehensive structure. Unity through codification will strengthen laws, giving them a context and structure understood by all, from ordinary citizens to legal specialists.

To sum up, harmonisation, uniformity and unity through codification of consumer protection legislation are crucial factors in establishing a thriving society. While the new government's programme of activity explicitly recognises consumer protection as a non-transitory objective, economic development is also highlighted as one of its three key priorities. Thus, recognizing consumers as an integral part of the economic environment and prioritizing their inclusion in the executive's agenda in the short, medium and long term is necessary and crucial.

Together, these concepts contribute to the development of a coherent and solid legal basis for consumer protection. By removing confusion and uncertainty from the legal framework, it creates an environment where consumers can engage in transactions with confidence and businesses can operate in a transparent and accountable manner. This stability and confidence in the economic environment supports sustainable growth of society and the economy as a whole.