

Client Brief

CONSUMER LAW

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The Transposition of the European Directive on Consumer Rights: A Focus on Distance and Off-Premises Contracts

A new text has recently joined the overabundance of Romanian norms in the area of consumer protection: Government Emergency Ordinance no. 34/2014 on the rights of consumers in contracts concluded with traders ("GEO 34/2014"), transposing Directive 2011/83/EU of the European Parliament and of the Council on consumer rights¹ (the "Directive").

The purpose of the Directive is to eliminate certain disparities between Member States in terms of consumer protection which amounted to internal market barriers. Since this Directive aims for full harmonization, the Member States are under an obligation not to maintain or introduce diverging provisions in their national laws, be they more or less stringent than those of the Directive, except for certain matters.

In addition to an almost literal transposition of the Directive, GEO 34/2014 implements modifications to *Government Emergency Ordinance no. 111/2011 on electronic communications*, setting forth new rules as regards the distance and off-premises contracts concluded by professional end users for the supply of electronic communication services.

- *The main provisions of GEO 34/2014*

The provisions of GEO 34/2014 may be classified into three categories:

- (i) general consumer rights, relating to: information requirements within the pre-contractual stage; the passing of risk; the fees for the use of means of payment; additional payments; the communication by telephone; inertia selling.
- (ii) consumer rights in distance and off-premises contracts, relating to: information requirements within the pre-contractual stage; form of the contract; withdrawal from the contract.

¹ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

- (iii) rights of professional end users as regards the distance and off-premises contracts they conclude for the supply of electronic communication services; these users' rights are similar to those set forth in the GEO's section on consumer protection.

- *The scope of GEO 34/2014*

First of all, GEO 34/2014 applies to all consumer contracts, namely any contract concluded between a trader and a consumer, with some exemptions (*e.g.* contracts regarding financial services).

Consumer contracts covered by this text include, *inter alia*: (i) contracts for the provision of publicly available electronic communications services or of access and connection to public electronic communications networks or for delivery of terminal equipment related to the service; (ii) contracts for the supply of water, gas, electricity or district heating, including by public providers.

Secondly, as mentioned above, the modifications brought about by GEO 34/2014 apply to distance and off-premises contracts concluded by professional end users for the supply of electronic communication services.

In any case, the provisions of GEO 34/2014 shall apply only to the contracts concluded after its entry into force, *i.e.* 13 June 2014.

- *The right of withdrawal from distance and off-premises contracts*

The consumers' right of withdrawal from distance and off-premises contracts is particularly detailed in GEO 34/2014. Moreover, the new provisions regarding this right were transposed to the relations between professional end users and their suppliers of electronic communication services. In order to facilitate the presentation below, we shall refer to the contracts between "traders" and "consumers".

The withdrawal period shall be of 14 days, which will be extended to 12 months in case the trader did not inform the consumer on the latter's right of withdrawal.

If the consumer decides to withdraw from the contract, the trader shall reimburse the amounts received from the consumer (including, if applicable, the costs of delivery) not later than 14 days from the day on which he is informed of the withdrawal. However, the trader may withhold the reimbursement until he has received the returned goods or until the consumer has supplied evidence of having sent back the goods, whichever is the earliest.

Unless the trader has offered to collect the goods himself, the consumer shall send back the goods to the trader not later than 14 days from the day on which he has informed the trader of the withdrawal.

Finally, please note that certain categories of distance or off-premises contracts (*e.g.* sale of custom-made products) are excluded from the application of the right of withdrawal.

If you are interested in receiving further information on this topic, please do not hesitate to contact us.

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Contact

LEROY ȘI ASOCIAȚII SCA
10-12 Maior Gh. Șonțu
Str. 011448 Bucharest
tel. +40 (21) 223 03 10
fax: +40 (21) 223 03 42
www.leroylaw.ro

BRUNO LEROY

Partner

bruno.leroy@leroylaw.ro



ELEONORA UDROIU

Managing Associate

eleonora.udroiou@leroylaw.ro



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