

## **DUTY OF INFORMATION DISCLOSURE IN THE CONCLUSION OF CONSUMER CONTRACTS - IMPLEMENTATION OF THE EU LAW STANDARDS IN THE REPUBLIC OF MACEDONIA**

### **Summary**

The article deals with the issue on the level of harmonisation of the existing Macedonian legislation with the EU information disclosure standards for consumer contracts and in which direction it should the Macedonian legislation further develop. In the first part it explores the requirements applicable for all consumer contracts the specificities for the different consumer contracts. The second part is focused on the issue of the legal remedies for the breach of the information duties, focusing on exploring whether and to what extend the remedies for the civil law are available and whether the sanctioning of such breach would be only civil or other sanctions (such as administrative) will be imposed to the trader, and what will be the relation between the sanctions.

**Key words:** pre-contractual information, consumer contract, remedies for breach of information duties, EU consumer contract law, Macedonian consumer law.

### **I. Introduction**

Contractual relations are based and guided on the equal position of the parties. The functioning of the system requires the parties to the contract to have same position, none to be able to impose its will. Any acting contrary to such limits is sanctioned by the law. Thus, the systems impose mechanisms such equality of the position to be put in place and maintained in the realization of the contractual rights and obligations of the parties. However, although *de jure* the position of the parties is equal, *de facto* in a contractual relation, as in all other relations, the 'power' is vested in the one that has and manages the information. This is especially the case in the consumer contracts. On one side it is the trader (goods and/or service provider) who possess the information and manages them, and on the other the consumer who's market power is significantly lower. In such circumstances the legislation provides for the duty to disclose the relevant information to the consumer. Provision of relevant information is seen as a part in the formation of relevant will for the perfect formation of the contract.

This information duty becomes one of the most important features of the European consumer protection legislation<sup>1</sup> although its existence in the legislation of the European countries is far from novelty<sup>2</sup>. The process of the harmonization (and to certain extend *de*

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<sup>1</sup> See further Norbert Reich, Harmonisation of European contract law: with special emphasis on consumer law; China-EU Law Journal (2011) 1:55-94, p. 59-61.

<sup>2</sup> Hein Kötz, Precontractual Duties of Disclosure: A Comparative and Economic Perspective, European Journal of Law and Economics, 9:5 – 19(2000), pp.7-8.

*facto* unification) of the Consumer Protection Law of the European Union provides set of standards on the traders obligations. The question that arises is whether this – existence of standards for information disclosure duty - could be said with certainty when it comes to the EU consumer protection legislation. Exploring this issue for us is of importance having in mind the process of development of the Macedonian civil law and the drafting of the future Macedonian Civil Code. The drafting committee, in regard to the level of the inclusion of the consumer legislation in the Civil Code, took the position that only the principle issues will be regulated in the Code, while the specific will remain in the Law on Consumer Protection as *lex specialis*. In addition, the Government undertook actives for the strengthening the consumer protection legislation in the country aimed at further harmonization of the national legislation with the EU law and strengthening the capacities for its enforcement. The national interest and strategic goal of the Government is to meet the requirements of the EU integration process and at the same time to strengthen the governing of the law, democracy and market economy by undertaking measures in order to achieve a consistent consumer policy.

In Macedonia the consumer policy is identified as a specific policy and its realization was first through the first Law on Consumers' Protection adopted in the year of 2000. In accordance with the further developments of the EU consumer legislation and policy, the new Law on Consumer Protection was adopted in the year of 2004 and subsequently amended<sup>3</sup>. In the Law 12 EU Directives of the Consumer Acquis were transposed<sup>4</sup>. This law was amended in 2007, 2008, 2011 and 2015<sup>5</sup>. Besides the Law on Consumer Protection there are number of other laws which directly or indirectly influence the protection of consumers.

Having this in mind, this research was carried out aiming to determine what is the level of harmonisation of the existing Macedonian legislation with the EU information disclosure standards for consumer contracts and in which direction it should the Macedonian legislation further develop. For this purpose the first task was to establish are there uniformed standards or minimum requirements applicable for all consumer contracts and what they are, and second what are the specificities for the different consumer contracts. For this purpose the current EU legislation was analysed. The pool included the Directive 2011/83/EU on Consumer Rights<sup>6</sup>. For the specific consumer credit contracts the Directive 2008/48/EC of the European Parliament and of the Council on credit agreements for consumers and

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<sup>3</sup> Law on Consumer Protection ("Official Gazette of RM" no. 38/2004, 77/2007, 103/2008, 24/2011, 164/2013, 97/2015 и 152/2015); in the text LCP.

<sup>4</sup> Directives 84/450, 85/374, 85/577, 2001/95, 93/13, 94/47, 97/7, 97/55, 1999/44, 88/378, 98/6 and 87/357.

<sup>5</sup> The amendments in 2007 are related to the consumer organisations' responsibilities, guarantees, the responsibilities of the consumer councils on the local municipal level, and derogation of the articles related to the safety of products (becoming part of the Law on Safety of Products). In 2008, the amendments were mostly related on the articles on constitutions and responsibilities of the Consumer Council of the Government. The most significant amendments of the Law on Consumer Protection were done in 2011 when the Unfair Commercial Practices (Directive 2005/29 /EC) and Directive on the collective protection of the consumers' interest including injunction (Directive 98/27/EC) were implemented in the Law. Part of the law related to children toys was derogated, because the legal base for the Rulebook for safety of toys now became the Law on safety of products. The new safety of toys Directive 2009/48/EC is transposed in the Rulebook. In 2015 the Law was amended so as to reflect the standards set in the Consumers Protection Directive as elaborated below.

<sup>6</sup> 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; OJ L 304 22.11.2011, p. 64 -88; hereinafter CRD. The rules of the CRD are to be supplemented with the (future) rules on the contracts for the supply of digital content and on certain aspects concerning contracts for the online and other distance sales of good contained in the two respective proposals for Directives published by the Commission: Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content (COM/2015/0634 final - 2015/0287 (COD)) and Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the online and other distance sales of goods (COM/2015/0635 final - 2015/0288 (COD))

repealing Council Directive 87/102/EEC<sup>7</sup> is analysed and for the question of the travel contracts the Council Directive 90/314/EEC on package travel, package holidays and package tours<sup>8</sup>. For the purpose of comparison of certain solutions reference is made also to the Draft Common Frame of Reference<sup>9</sup>, Principles of the Existing EC Contract Law<sup>10</sup> and the Proposal for a Regulation of the European Parliament and the Council on the Common European Sales Law<sup>11</sup> especially in regard to the issues of the legal remedies for the breach of the information duties, which was a second issue of interest. Namely it was needed to see which legal remedies available are for the consumers in the cases when such duty is breached. The main point of exploration was whether and to what extent the remedies for the civil law are available and whether the sanctioning of such breach would be only civil or other sanctions (such as administrative) will be imposed to the trader, and what will be the relation between the sanctions. The article is structured in two major parts: I. Comparative Analysis of the substantive issues on the Information Requirements in the EU consumer Law and the Macedonian Consumer Protection Law and II. Analysis of the available remedies.

## **II. Comparative Analysis of the substantive issues on the Information Requirements in the EU Consumer Law and the Macedonian Consumer Protection Law**

The analysed legislation of the EU shows that in fact, since recently, there are general information requirements applicable to all consumer contracts. The specificities that exist are drawn from: a) the manner in which the contract is concluded (distance and off-premises); or b) the subject of the contract (consumer credits and package travel). Further specificities may

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<sup>7</sup> *OJ L* 133, 22.5.2008, p. 66–92; hereinafter Directive 2008/48/EC on credit agreements for consumers

<sup>8</sup> *OJ L* 158, 23.6.1990, p. 59–6; hereinafter Package Travel Directive. It is to be noted that this Directive is repeal with Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (*OJ L* 326, 11.12.2015, p. 1–33) with effect from 1 July 2018 (Art. 29(1)). This date is the deadline for the transposition of the Directive 2015/2302 into the national legislation of the member states (Art. 28 (1)). Therefore the analysis here is made in reference to the existing package Travel Directive.

<sup>9</sup> Christian von Bar et al., *Principles, Definitions and Model Rules of the European Private law: Draft Common Frame of Reference*, Sellier, Munich, 2009; hereinafter DCFR

<sup>10</sup> European Research Group on Existing EC Private Law (Acquis Group), *Principles of Existing EC Contract Law (Acquis Principles). Contract II, General Provisions, Delivery of Goods, Package Travel and Payment Services*, Sellier, Munich, 2009; hereinafter Acquis Principles.

<sup>11</sup> COM(2011) - 2011/0284(COD), available at

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0635:FIN:en:PDF>; hereinafter CESL. In its legislative resolution of 26 February 2014 on the proposal for a regulation of the European Parliament and of the Council on a Common European Sales Law (COM(2011)0635 – C7-0329/2011 – 2011/0284(COD)) the European Parliament decided to restrict the scope of CESL to online and other distance sales as well as to extend the rules on digital content which is provided against another counter-performance than money. In accordance with Commission Work Programme 2015 (COM(2014) 910 final), Annex 2, the CESL was to be changed i.e. a modified proposal in order to fully unleash the potential of ecommerce in the Digital Single Market is to be expected. In June 2015 the Commission opens public consultations, and in December 2015 formally made the Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content (COM/2015/0634 final - 2015/0287 (COD)) and Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the online and other distance sales of goods (COM/2015/0635 final - 2015/0288 (COD)) so as to tackle the main obstacles to cross-border e-commerce in the EU: legal fragmentation in the area of consumer contract law and resulting high costs for businesses – especially SMEs- and low consumer trust when buying online from another country. Formal decision of withdrawal of the CESL is yet to be made. In this paper, the reference to CESL is made having in mind all of these legislative developments for comparison purposes.

be found in regard to specific piece of information to be provided such as the price, the conformity and commercial guarantee etc.

## 1. Information requirements applicable to all consumer contracts

The *Directive 2011/83/EU on Consumer Rights* aims at full (maximum) harmonisation of the pre-contractual information rules provide to consumers<sup>12</sup> as primary principle, providing for an opportunity more stringent provisions to be included in the national legislation where such allowed (Art. 4 of the Directive).

The existence of general rules applicable to all consumer contracts covered under the Directive<sup>13</sup> could be drawn from the wording of the Art. 5 of CRD, which provides the information requirements to be included in the legislation for the '*contract other than a distance or an off-premises contract, or any corresponding offer*'. The said article set standards:

- when the information is to be provided: before the consumer is bound by a contract or any corresponding offer
- the manner in which the information is to be provided: in a clear and comprehensible manner,
- the type of information to be provided, if is not already apparent from the context, listing 8 requirements related to the (a) characteristic of the goods and services; (b) identity and location of trader; (c) price of goods and services; (d) payment, delivery and performance, including complaint procedures, arrangements, where applicable; (e) guarantees for the conformity of the goods, after sales service and commercial guarantees where applicable; (f) duration and termination of the contract; (g) functionality and technical protection for digital connect, where applicable; and (h) interoperability of digital content<sup>14</sup>.

In the scope of the definition '*all contracts other than a distance or an off-premises contract*' by virtue of Art. 5(2) explicitly are included the contracts for the supply of water,

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<sup>12</sup> The DCFR, Acquis Principles and CESL provide for pre-contractual information duties not only for the B2C contracts but also for the commercial transactions (B2B contracts). See further Article II. 3:101 DCFR, art. 2:201 and 2:202 of Acquis Principles, Part II: Chapter 2 (section 1 and 2) of CESL.

<sup>13</sup> In accordance with Art. 3(1) of the CRD it applies under the conditions and to the extent set out in its provisions, to any contract concluded between a trader and a consumer. It shall also apply to contracts for the supply of water, gas, electricity or district heating, including by public providers, to the extent that these commodities are provided on a contractual basis. As per Art. 3(3) it does not include contracts a) for social services, including social housing, childcare and support of families and persons permanently or temporarily in need, including long-term care; (b) for healthcare as defined in point (a) of Article 3 of Directive 2011/24/EU, whether or not they are provided via healthcare facilities; (c) for gambling, which involves wagering a stake with pecuniary value in games of chance, including lotteries, casino games and betting transactions; (d) for financial services; (e) for the creation, acquisition or transfer of immovable property or of rights in immovable property; (f) for the construction of new buildings, the substantial conversion of existing buildings and for rental of accommodation for residential purposes; (g) which fall within the scope of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours; (h) which fall within the scope of Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (2); (i) which, in accordance with the laws of Member States, are established by a public office-holder who has a statutory obligation to be independent and impartial and who must ensure, by providing comprehensive legal information, that the consumer only concludes the contract on the basis of careful legal consideration and with knowledge of its legal scope; (j) for the supply of foodstuffs, beverages or other goods intended for current consumption in the household, and which are physically supplied by a trader on frequent and regular rounds to the consumer's home, residence or workplace; (k) for passenger transport services, with the exception of Article 8(2) and Articles 19 and 22; (l) concluded by means of automatic vending machines or automated commercial premises; (m) concluded with telecommunications operators through public payphones for their use or concluded for the use of one single connection by telephone, Internet or fax established by a consumer.

<sup>14</sup> Art. 5 (1) of CRD

gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or of digital content which is not supplied on a tangible medium. There is an option for the Member States to exclude the application to contracts which involve day-to-day transactions and which are performed immediately at the time of their conclusion (Art.5 (3)).

In regard to these contracts, the Member States, in accordance with Art. 5(4) may adopt or maintain additional pre-contractual information requirements. Such provision of the CRD implies that the minimum harmonisation actually requested by this article, may lead to situation that although there is a general rule the specific ones that exist in the member states may differ.

In the *Macedonian legislation*, the general rules are to be found in the Law on Obligations<sup>15</sup>, and for specific information in the Law on Consumer Protection. The LOO does not include specific list of information to be provided to the consumer i.e. the contracting parties<sup>16</sup>. However, its general rules on the conclusion of the contract provide for indication of which information is to be provided in the conclusion of the contract. First and foremost the information to be provided relates to the nature of the goods and services and their process, as in Art. 24 of the LOO it is clear that the offer must include all essential elements of the contract. They will depend of the type of the contract thus for the most often consumer contracts will include for sales contracts: price and the good and for service contracts: the service and the price thereof. The information provided must be in such manner so as not to mislead the other contracting party as any flaws in the formation of the will result in absolute or relative nullity of the contract, issue which will be elaborated further in this paper.

In particular, the Law on Consumer Protection contains two rules on pre-contractual information requirements. The one, existing before the transposition of the CRD is arrowed to the sales contract. Namely, Art. 5(1)(1) provides that the trader before the conclusion of the sales contract is obliged in good faith to provide to the consumer accurate and useful information on the quality, the characteristics of the good or the service or about the terms of the sale, as well as all other information requested by the consumer included in the declaration of the good. We find that the scope of the article is limited both in terms to which contracts it is to be applied and on the type of information to be provided. When it comes to indication of prices (as an information requirement within the Art.5 (1) (c) of CRD), Art. 8 of the LCP provides detail rules on how the prices are to be indicated which are *ad literam* transposition of those set by the Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers.<sup>17</sup> With the transposition of the CRD<sup>18</sup>, general rule on the pre-contractual information requirements for contracts other than distance and off premises contracts was introduced, exact as Art.5 of CRD. Although containing general rules the provision is located in the group of chapters related to distance and off premises contracts.

## **2. Distance and Off-premises contracts**

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<sup>15</sup> Law on Obligations ( "Official Gazette of the Republic of Macedonia" no. 18/2001; 4/2002; 5/2003; 84/2008; 81/2009; 61/2009 and 123/2013); hereinafter LOO.

<sup>16</sup> The Law on Obligations regulates all transactions, thus it is equally applicable to B2C, C2C and B2B contracts. The exception, as set in Art. 16 when for the commercial transactions something else is provided for by other laws.

<sup>17</sup> Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers , *OJL* 80, 18.3.1998, p. 27–31

<sup>18</sup> See more below in point 2

In regard to the distance and off-premises contracts<sup>19</sup>, the CRD<sup>20</sup> regulates:

- The manner in which the information is to be provided: clear and comprehensible;
- The information to be provided: enlisting 20 different information pieces to be made available. They could be grouped, similarly to those related to all other contracts, to information regarding (a) main characteristics of the goods or services (Art. 6(1)(a); (b) identity of the trader, its location and contract details (Art. 6(1)(b), (c), (d) <sup>21</sup>; (c) price of goods and services; (d) the costs of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate (Art. 6(1)(f); (e) payment, delivery and performance arrangements (Art. 6(1)(g)); (f) matters related to the exercise of the withdrawal right<sup>22</sup>, including the model withdrawal form,<sup>23</sup> and payment of costs related to the exercise of the right and when such right is lost (Art. 6(1)(h-k));<sup>24</sup> (f) guarantees for the conformity of the goods, after sales service and commercial guarantees where applicable (Art. 6(1) (l, m); (g) existence of codes of conduct<sup>25</sup> and how to obtain them; (g) issues related to the duration of the contract and the consumers' obligations (Art. 6(1) (o, p)); (h) deposits or other requested financial guarantees (Art. 6(1) (q); (i) specific information related to the digital contents, where applicable (Art. 6(1) (r, s); (i) dispute resolution mechanisms (Art. 6(1)(t)).

- Specific for the distance and the off-premises contracts is that the CRD sets that the information to be provided are to form an integral part of the distance or off-premises contract and shall not be altered unless the contracting parties expressly agree otherwise.

The information requirements laid down in CRD are to provide a fixed standard for these contracts at EU level, as this part of the Directive is aimed at maximum harmonisation<sup>26</sup>.

However, they are in addition to information requirements contained in Directive on services in the internal market<sup>27</sup> and Directive on electronic commerce<sup>28</sup> and do not prevent

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<sup>19</sup> These requirements are also applicable to contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or of digital content which is not supplied on a tangible medium (Art. 6(2), CRD.)

<sup>20</sup> It seems that based on this model the distinction was made in the CESL as well ( See Part II: Chapter 2(section 2) of CESL.

<sup>21</sup> In accordance with Art. 6(3), in the case of a public auction, the information referred to in points (b), (c) and (d) may be replaced by the equivalent details for the auctioneer.

<sup>22</sup> Article 11, Exercise of the right of withdrawal: 1. Before the expiry of the withdrawal period, the consumer shall inform the trader of his decision to withdraw from the contract. For this purpose, the consumer may either: (a) use the model withdrawal form as set out in Annex I(B); or (b) make any other unequivocal statement setting out his decision to withdraw from the contract. Member States shall not provide for any formal requirements applicable to the model withdrawal form other than those set out in Annex I(B).

<sup>23</sup> Annex I(B) of the CRD outlines the Model withdrawal form.

<sup>24</sup> In accordance with Art. 6(4) The information referred to in points (h), (i) and (j) of paragraph 1 may be provided by means of the model instructions on withdrawal set out in Annex I(A). The trader shall have fulfilled the information requirements laid down in points (h), (i) and (j) of paragraph 1 if he has supplied these instructions to the consumer, correctly filled in.

<sup>25</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European

Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'), Article 2, Definitions: (f) 'code of conduct' means an agreement or set of rules not imposed by law, regulation or administrative provision of a Member State which defines the behaviour of traders who undertake to be bound by the code in relation to one or more particular commercial practices or business sectors;

<sup>26</sup> Art. 4 of the Directive apply as option is not provided for the introduction of more stringent provisions rather than those laid in the Directive. The only option the members states have is in accordance with Art.6(7) is to maintain or introduce in their national law language requirements regarding the contractual information, so as to ensure that such information is easily understood by the consumer. By virtue of Art. 7(5) 5. Member States may not impose any further formal pre-contractual information requirements for the fulfilment of the information obligations laid down in CRD.

Member States from imposing additional information requirements in accordance with those Directives. In fact, if a provision of these two directives on the content and the manner in which the information is to be provided conflicts with a provision of this Directive, the provision of this Directive shall prevail.

Compared to the solutions of its predecessors, the Consumer Rights Directive provides for much higher standards in the terms of the requirements for pre-contractual information provision<sup>29</sup>.

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<sup>27</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006, p. 36–68.

<sup>28</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'); Official Journal L 178, 17/07/2000 P. 0001 – 0016.

<sup>29</sup> Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises required the traders, in accordance with Art. 4, to give consumers written notice of their right of cancellation within the cancellation period (In accordance with Art. 5 it is not less than seven days from receipt by the consumer of the notice) together with the name and address of a person against whom that right may be exercised. It also required such notice to be dated and state particulars enabling the contract to be identified. The deadlines for the delivery of such notice were dependant on the type of the contract (In accordance with Art. 4 (1) in conjunction with Art. 1(1-4): (a) in the case of contracts concluded during an excursion organized by the trader away from his business premises, or during a visit by a trader (i) to the consumer's home or to that of another consumer; (ii) to the consumer's place of work; where the visit does not take place at the express request of the consumer, it is to be provided at the time of conclusion of the contract. In the case of contracts for the supply of goods or services other than those concerning which the consumer requested the visit of the trader, provided that when he requested the visit the consumer did not know, or could not reasonably have known, that the supply of those other goods or services formed part of the trader's commercial or professional activities, not later than the time of conclusion of the contract; (c) in the case of contracts in respect of which an offer was made by the consumer under conditions similar to those described above, when the offer is made by the consumer). 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<sup>29</sup>, included list of information to be provided to the consumer in good time prior to the conclusion of any distance contract. It is to be noted that the Directive is not very clear as of the meaning of the term 'in good time prior' and the experience of the implementation of the stated term in the legislation of the member states differs (see further Consumer Law Compendium, pp. 529, 530 [http://www.eu-consumer-law.org/study2\\_en.pdf#tm00019](http://www.eu-consumer-law.org/study2_en.pdf#tm00019)). These information, in accordance with Art. 4(1), include: (a) the identity of the supplier and, in the case of contracts requiring payment in advance, his address; (b) the main characteristics of the goods or services; (c) the price of the goods or services including all taxes; (d) delivery costs, where appropriate; (e) the arrangements for payment, delivery or performance; (f) the existence of a right of withdrawal, except when such is excluded (Art. 6 (3): 3. Unless the parties have agreed otherwise, the consumer may not exercise the right of withdrawal provided for in paragraph 1 in respect of contracts: - for the provision of services if performance has begun, with the consumer's agreement, before the end of the seven working day period referred to in paragraph 1, - for the supply of goods or services the price of which is dependent on fluctuations in the financial market which cannot be controlled by the supplier, - for the supply of goods made to the consumer's specifications or clearly personalized or which, by reason of their nature, cannot be returned or are liable to deteriorate or expire rapidly, - for the supply of audio or video recordings or computer software which were unsealed by the consumer, - for the supply of newspapers, periodicals and magazines, - for gaming and lottery services.); (g) the cost of using the means of distance communication, where it is calculated other than at the basic rate; (h) the period for which the offer or the price remains valid; (i) where appropriate, the minimum duration of the contract in the case of contracts for the supply of products or services to be performed permanently or recurrently. The Directive (Art. 4(2)) stipulated that the commercial purpose of these information must be made clear, and they must be provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the principles governing the protection of those who are unable, pursuant to the legislation of the Member States, to give their consent, such as minors. In accordance with par. 3 of the same article, in the case of telephone communications, the identity of the supplier and the commercial purpose of the call shall be made explicitly clear at the beginning of any conversation with the consumer. The information to be provided, in accordance with Art. 5(1) must be confirmed in writing or in another durable medium available and accessible to the consumer, in good time during the performance of the contract, and at the latest at the time of delivery where goods not for delivery to third parties are concerned, unless the information has already been given to the consumer prior to conclusion of the contract in writing or on another durable medium available and accessible to him. Again the term was transposed in the national legislations in various manners (see further Consumer Law Compendium, pp. 537,

The rules of the CDR were transposed in the *Macedonian LPC* in June 2015<sup>30</sup>. The transposition affected the respective definitions<sup>31</sup> of distance and off-premises contracts and the specific rules regulating those contracts (Art. 84-103). The amendments provided *ad literam* transition of almost all of the rules of the CRD, as the list of the information to be provided is not complete as per Art.6(1) DPP<sup>32</sup>. The Legislator also missed to regulate that the rules on pre-contractual information are applicable to contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or of digital content which is not supplied on a tangible medium<sup>33</sup>. The transposition also excluded the rules related to the manner of delivery of certain information to specific sales.<sup>34</sup> Beside the shortcomings related to the rather technical information, the legislator missed to transpose two substantively very important provisions of the CRD.

Namely the LCP misses that the information that are to be provided will constitute an integral part of the distance or off-premises contract and they are not to be altered unless the contracting parties expressly agree otherwise (Art. 6(5) of CRD). It also misses to provide right to the consumer not to bear the expenses for the additional charges or other costs if the trader failed to provide the relevant information on them (Art. 6(6)). The LCP also fails to provide that in the case of dispute the burden of proof that the information has been provided lies with the trader.<sup>35</sup> The reason why these provision have not been transposed with the 2015 amendments of the Law<sup>36</sup> thus the Macedonian consumers have been withhold of certain rights, remain unclear .

### 3. Consumer Credits

At EU level the consumer credits are regulated by *Directive 2008/48/EC on credit agreements for consumers*<sup>37</sup>. In November 2011, the Commission adopted Directive amending Part II of Annex I to Directive 2008/48/EC<sup>38</sup>. One of the aims of the Directive is to provide for protection of the consumers against unfair or misleading practices, in particular with respect to the disclosure of information by the creditor, in line with Unfair Commercial Practices Directive<sup>39</sup>. In the context of pre-contractual information disclosure duty is probably the most comprehensive legislative piece, as it regulates in detail what type of information is to be provided prior to the conclusion of the contract. The provision of

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538 [http://www.eu-consumer-law.org/study2\\_en.pdf#tm00019](http://www.eu-consumer-law.org/study2_en.pdf#tm00019)) The Directive provided what the written confirmation should include<sup>29</sup>.

<sup>30</sup> Law amending the Law on Consumer Protection („Official Gazette of the Republic of Macedonia” no. 97/2015);

<sup>31</sup> As curiosity the legislator went that far in the *ad literam* transposition of the rules of the CRD that it amended completely the definition of ‘consumer’ replacing it with the one contained in the CRD. The omission was corrected in September 2015 when new amendments were made (Law amending the Law on Consumer Protection („Official Gazette of the Republic of Macedonia” no.152/2015)) so the definition of the consumer could reflect all possible situations of conclusion of consumer contracts .

<sup>32</sup> The legislator in the list of information did not included those of Art. 6(1/o-t)

<sup>33</sup> Art. 6(2), CRD.

<sup>34</sup> Art 6(3) and 6(4) of CRD.

<sup>35</sup> Čl. 6(9) DPP

<sup>36</sup> Law on amending the Law for Consumer Protection („Official Gazette of Republic of Macedonia“ n. 97/2015).

<sup>37</sup> Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC OJ L 133, 22.5.2008, p. 66–92.

<sup>38</sup> Commission Directive 2011/90/EU of 14 November 2011 amending Part II of Annex I to Directive 2008/48/EC of the European Parliament and of the Council providing additional assumptions for the calculation of the annual percentage rate of charge Text with EEA relevance; OJ L 296, 15.11.2011, pp. 35–37.

<sup>39</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (“Unfair Commercial Practices Directive”); OJ L 149, 11.6.2005, p. 22.



information is seen as a mean that enables the consumers to make their decisions in full knowledge of the facts, and for this purpose they should receive adequate information, which the consumer may take away and consider, prior to the conclusion of the credit agreement, on the conditions and cost of the credit and on their obligations<sup>40</sup>. The Directive is specific as it provides for information requirements on two levels: in the advertising of the services and prior to the conclusion of the contract.

The Directive, in Art. 4, provides which set of standard information must be included<sup>41</sup> in any advertising concerning credit agreements which indicates an interest rate or any figures relating to the cost of the credit to the consumer<sup>42</sup>. The standard information is to be provided in a clear, concise and prominent way by means of a representative example, and is to include information on (a) the borrowing rate; (b) the total amount of credit; (c) the annual percentage rate of charge<sup>43</sup>; (d) if applicable, the duration of the credit agreement; (e) in the case of a credit in the form of deferred payment for a specific good or service, the cash price and the amount of any advance payment; and (f) if applicable, the total amount payable by the consumer and the amount of the instalments. If for the conclusion of the consumer credit contract in principle or for its conclusion under the marketed terms and conditions it is compulsory to use some ancillary service and the cost of that service cannot be determined in advance, this is to be provided as information as well.

On the issue of pre-contractual information, the Consumer Credits Directive provides general rules of pre-contractual information requirements and pre-contractual information requirements credit agreements in the form of an overdraft facility and for certain specific credit agreements. The obligation for the provision of such information is allocated at the creditor and credit intermediary and it is to be provided in good time before the consumer is bound by any credit agreement or offer. The specificity of these information requirements are that they are to be provided in a manner that enables the consumer to *'take an informed decision on whether to conclude a credit agreement'* by enabling comparison between the different offers<sup>44</sup>. The information is to be based on the credit terms and conditions offered by the creditor and, if applicable, the preferences expressed and information supplied by the consumer. By virtue of Art. 5 (1), 19 items are to be specified related to all relevant issues ranging from the type of the credit through the information on the performance of the contract including the borrowing rates and the interest rates to the termination of the contract.

It is specific to the consumer credit contracts information requirements that the creditor may provide information on thus limit the period in which it is bound by the pre-contractual information. Beside the stated information to be included in the Standard European Consumer Credit Information form, any additional information may be provided but in a spare form. Special rules are to be applied in the cases in the case of voice telephony communications<sup>45</sup> including the possibility when the communication is such that does not enable the information to be provided in accordance with the general rules the creditor to provide the consumer with the full pre-contractual information using the Standard European Consumer Credit Information form immediately after the conclusion of the credit agreement.

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<sup>40</sup> See Recitals 19 to the Directive.

<sup>41</sup> The set of information to be provided, as stipulated in Art. 4(4) is without prejudice to Unfair Commercial Practices Directive.

<sup>42</sup> In accordance with Art. 4(1), second sentence this obligation shall not apply where national legislation requires the indication of the annual percentage rate of charge in advertising concerning credit agreements which does not indicate an interest rate or any figures relating to any cost of credit to the consumer within the meaning of the first subparagraph.

<sup>43</sup> This obligation may be opted out in the case of credit agreements in the form of an overdraft facility and where the credit has to be repaid on demand or within three months.

<sup>44</sup> This is to be done on paper or other durable medium by means of the Standard European Consumer Credit Information form set out in Annex II of the Directive.

<sup>45</sup> Art. 5 (2) in conjunction with Article 3(3) of Directive 2002/65/EC.

Beside the stated pre-contractual information duties the creditor shall be obliged to provide the consumer with draft credit agreement, unless at the time of the request it's unwilling to proceed to the conclusion of the credit agreement with the consumer (Art. 5(4)).

In addition to this, the Directive requires the Member States to ensure that creditors and, where applicable, credit intermediaries are obliged provide adequate explanations<sup>46</sup> to the consumers enabling them to assess the adequacy for the credit to their needs and possibilities, completely understanding the information provided and services to be provided.

In regard to the pre-contractual information requirements for certain credit agreements in the form of an overdraft facility and for certain specific credit agreements, as regulated in Art. 6(1) the information to be provided is more or less the same as the one for all other consumer contracts with specificities pertinent to these financial instruments. The main point again is that the information should be provide in good time before the consumer becomes bound by any credit agreement or offer concerning a credit agreement, by the creditor and the credit intermediary, and the information is to be based on the credit terms and conditions offered by the creditor and, if applicable, the preferences expressed and information supplied by the consumer. They should be such so as to provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement and it must on paper or on another durable medium and all information shall be equally prominent.

In *Macedonia*, the issue of the consumer credits is regulated by *the Law on Protection of the Consumers in Consumer Credits Contracts*.<sup>47</sup> The information requirements set in the Directive are ad literam transposed in the Law<sup>48</sup>, in the same numbering and order as in the Directive. For the provision of the pre-contractual information a special form, content and format of which is to be set by the Governor of the National Bank<sup>49</sup>, is envisaged as well.

#### 4. Package Travel

The rules on the consumer protection in regard to package travel on EU level changed recently with the enactment of the new Package Travel Directive.<sup>50</sup> The directive regulates issues concerning contracts between travellers and traders relating to package travel and linked travel arrangements. The Directive in article 5 and 6 defines the type and manner of provision of pre-contractual information and their nature. As the transposition deadline is set for 1 January 2018 activities have not been undertaken yet for amendments of the Macedonian legislation. For this purpose in this paper we will focus on the *Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours*<sup>51</sup> that

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<sup>46</sup> Member States may adapt the manner by which and the extent to which such assistance is given, as well as by whom it is given, to the particular circumstances of the situation in which the credit agreement is offered, the person to whom it is offered and the type of credit offered.

<sup>47</sup> Official Gazette of the Republic of Macedonia 51/2011. With the adoption of this Law in 2011 the previous Law on Protection of the Consumers in Consumer Credits Contracts (Official Gazette of the Republic of Macedonia No. 63/2007 and 17/11) has been repealed; hereinafter Law on Consumer Credits.

<sup>48</sup> The Law itself is more or less translation of the relevant Directive.

<sup>49</sup> Art. 6(6) in conjunction with Art. 6(1) of the Law on Consumer Credits. The Governor issued Guidebook on the format and the content of the form with pre-contractual information on the offered credit terms for consumers' credits ("Official Gazette of the Republic of Macedonia" no. 101/2011 and 134/2011)

<sup>50</sup> Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC, *OJ L 326, 11.12.2015, p. 1–33*.

<sup>51</sup> On the status please refer to footnote 9.

is the main source used in shaping the current Macedonian rules. This directive sets minimum standards<sup>52</sup> as for the content of the provided information prior to the conclusion of the contract as well as the form in which it is to be provided. In general it requires the organizer of the package and/or the retailer of it to be under obligation to ensure that the information provide in descriptive matter relating to packages which they respectively organize and sell, and the information which is given, is not misleading and brochures made available to consumers contain information which to be comprehensible and accurate<sup>53</sup>. It is to be noted that the wording of the Directive is such that the focus is given on the manner in which the information is to be provide rather than the type of information that is to be provided.

In accordance with Art.3(1) of the Directive, any descriptive matter concerning a package and supplied by the organizer or the retailer to the consumer, the price of the package and any other conditions applying to the contract must not contain any misleading information. In the case when a brochure is made available to the consumer, in accordance with Art.3(2) it shall indicate in a legible, comprehensible and accurate manner both the price and adequate information concerning the transportation and the means of transportation; accommodation and meal plans; itinerary; passport and visa requirements as well as health formalities required for the journey and the stay; the monetary amount or the percentage of the price which is to be paid on account, and the timetable for payment of the balance; and whether a minimum number of persons is required for the package to take place and, if so, the deadline for informing the consumer in the event of cancellation.

The provision of such information and in the prescribed manner is of high importance, as particulars contained in the brochure are in principle binding on the organizer or retailer<sup>54</sup>. In addition, in accordance with Art.4(1), the organizer and/or the retailer are obliged to provide the consumer, in writing or any other appropriate form, before the contract is concluded, with general information on passport and visa requirements applicable to nationals of the Member State or States concerned and in particular on the periods for obtaining them, as well as with information on the health formalities required for the journey and the stay. The article, also contain rules on information to be provide before the start of the journey<sup>55</sup>.

The package travels in *Macedonia* are regulated by the Law on Tourism<sup>56</sup> and the Law on Obligations. The Law on Tourism, in principle regulates the preconditions and the manner of performing the touristic business activities<sup>57</sup>. In the issue of the contracts it

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<sup>52</sup> In accordance with Art. 8 of the Directive Member States may adopt or return more stringent provisions in the field covered by this Directive to protect the consumer.

<sup>53</sup> Recitals of the Directive.

<sup>54</sup> Exceptions exist when changes in such particulars have been clearly communicated to the consumer before conclusion of the contract, in which case the brochure shall expressly state so, and changes are made later following an agreement between the parties to the contract.

<sup>55</sup> It is not specified if this is prior or following the conclusion of the contract. These information, to be provided in writing or any other appropriate form, in accordance with Art. 4(2): (i) the times and places of intermediate stops and transport connections as well as details of the place to be occupied by the traveller, e.g. cabin or berth on ship, sleeper compartment on train; (ii) the name, address and telephone number of the organizer's and/or retailer's local representative or, failing that, of local agencies on whose assistance a consumer in difficulty could call. Where no such representatives or agencies exist, the consumer must in any case be provided with an emergency telephone number or any other information that will enable him to contract the organizer and/or the retailer; (iii) in the case of journeys or stays abroad by minors, information enabling direct contact to be established with the child or the person responsible at the child's place of stay; (iv) information on the optional conclusion of an insurance policy to cover the cost of cancellation by the consumer or the cost of assistance, including repatriation, in the event of accident or illness.

<sup>56</sup> Law on Tourism ("Official Gazette of the Republic of Macedonia" No.62/2004; 89/2008; 12/2009; 17/2011; 47/2011; 53/201, 123/2012, 164/2013 and 27/201).

<sup>57</sup> In accordance with Art. 2, par. 1, point 1 the touristic activity is defined as organisation and carrying tourist travels in tourism places, family excursions and other non-commercial excursions or other tourist arrangements in the country and abroad., provision of tourism information, selling and intermediary in selling of touristic services, intermediary in accommodation rentals etc.

regulates in general the duties of the travel agencies while concluding the contract and the elements of the contract<sup>58</sup>. The Law sets that travel agencies are obliged when selling package arrangements to provide to the consumer general information about the passport and visa requirements, the time needed to obtain them as well as specific health requirements (Art. 15(1)(3), to display the prices (Art. 15(1)(13) and in the sale and the realization of the services to follow the contract and the program of the travel arrangements (Art. 15(1)(13)). The Law, similarly to the Directive defines the elements of the contract. It also obliges the travel agent put the terms of the contract in writing and provides them to inform the passenger about them. The Law does not specify when such information must be provided. In addition the Law provides for obligations as for the program of the travel, which should contain information as provided in the Directive. Again it is not specified when these information must be provide and what would prevail should the contract differ from the program.

The LOO regulates the contract for organisation of a travel in a separate chapter. The information to be provided to the other contracting party is as provided in the Directive. In addition the Law provides that the organiser should hand out to the passenger confirmation about the travel which contains set of information. (Art. 916) Specific for these obligations is the existence and the validity of the contract is independent of the existence and the validity of the confirmation, however the organiser shall be liable for damages for omitting to provide the confirmation and for any inaccuracies in it (Art. 917).

### **III. Remedies**

There is no easy and straightforward answer to the question what if the information is not provided or what if the information provided is incomplete or not in the form as defined by the applicable legislation.

Before the enactment of the Consumer Rights Directive, the Consumer Acquis did not envisage any particular sanctions, leaving the matter for the member states to resolve<sup>59</sup>. Its enactment did not bring any general rule that can be established. The specific rule is regarding the sanctions for the omissions of information on the right of withdrawal and the additional charges.

#### **1. Mistake or fraud, absolute or relative nullity**

The quantity and the quality of the provided pre-contractual information certainly affect the process of the creation of the will of the consumer. But the nature of the flaws in the information disclosure will determine the applicable remedy.

The existing EU legislation is silent when it comes to establishment of general rules. The CRD except for specific measures, which will be analysed further, does not contain general rule of liability<sup>60</sup>.

Question arises should the flaws of the will, be considered mistake or fraud as options provided in the national legislation. The Law on Obligations defines the mistake as essential (Art. 53) if it is related to the essential features of the object, of the person with whom the contract is concluded, as well as the circumstances that in accordance with the trade customs or by the intent of the patties are considered to be of essence in deciding, while the party

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<sup>58</sup> The Law provides rather questionable definition of the terms contract defining that contract means the contract that connects the user and the organizer or the intermediary, concluded in written form in accordance with this Law and the Law on Obligations.

<sup>59</sup> Consumer Law Compendium, p. 778, [http://www.eu-consumer-law.org/study2\\_en.pdf#tm00019](http://www.eu-consumer-law.org/study2_en.pdf#tm00019).

<sup>60</sup> Such rules can be found in the DCFR, where liability for loss caused to the other party of the transaction is foreseen by Art. 3:107, art. 2:208 of the Acquis Principles and Part II, Chapter 2, Section 5 (Art. 29) of CESL

which is in mistake otherwise would not have concluded the contract. In the cases of contracts without remuneration the mistake in the reason for the conclusion of the contract shall be considered essential also.

By the national legislation the fraud is defined (Art. 57, LOO) as causation of mistake to the other party or its maintenance when such is intended for the purpose of inducing to conclude the contract. In such cases the other party may avoid the contract even in the cases when the mistake is not essential. When the fraud was made by third person, it will affect the contract if the other contracting party new or should have known of the fraud, except when the contract was without remuneration when such knowledge is not required.

Establishing whether the lack to provide information is to be considered mistake or fraud is of importance from the aspect whether the consequence would be those that are applicable for absolute or relative nullity of the contract, considering the fact that they differ in substance and procedure.

Thus, in the cases of absolute nullity<sup>61</sup> each of the contracting parties is obliged to return to the other one everything that was received on the basis of such agreement, and when that is not possible or the nature of what was performed does not permit so, to provide adequate monetary remuneration, by the process of the court decision, unless otherwise provided by the law (Art. 96 (1), LOO). The party which is to be held accountable for the conclusion of an absolutely null contract shall be liable for the damage that the other party suffers due to the nullity of the contract, if that party has not known or could not have known on the existence of the reason of the nullity. As for the procedure aspects it is to be noted that the court ex officio examines the absolute nullity and it can be called upon by any person who has a legal interest including the public prosecutor. The right to ask for declaration of absolute nullity of a contract does not elapse.

As a general rule the mistake in the will result in relative nullity of the contract (Art. 103, LOO). In such cases the establishment of the relative nullity could be asked only by the party who has interest in that. In accordance with Art. 105, what was performed on the basis of a contract which has been established void is to be returned, and if such return is not possible monetary remuneration is to be provided. The amount of the remuneration is to be calculated based on the prices in the time of the remuneration, or the court decision. In addition, the contracting party which is accountable for the relative nullity will be liable to the other party for the damage suffered thereof, if this party did know or could have known about the existence of the relative nullity (Art. 107, LOO). The right to ask to establish relative nullity elapses within a year from the discovery of the circumstances which lead to relative nullity, i.e. the casing of the duress, but in any case within three years following the conclusion of the contract.

Analysing the type of information to be provided for the consumer contract, as well as the *de facto* position of the parties and the imbalance of their market powers, we find that the failure to abide to the pre-contractual information disclosure duties are to be considered fraud within the meaning of the national legislation does lead to absolute nullity of the contract. Confirmation for such position one may find the definition of the fraud of the Draft Common Frame of Reference where in II.-7:205 it is provided that a party may avoid contract when the other party induced conclusion of the contract *inter alia* fraudulent non-disclosure of any pre-contractual information duty.

Such position may also be drawn from the Decision of the European Court of Justice (now Court of Justice of the European Union) in the case *Eva Martín Martín v EDP Editores SL*<sup>62</sup> although restricted to the Art. 4 of the Directive 87/577/EEC. The court in its ruling found that Art. 4 of the old Off-premises Contracts Directive does not preclude a national

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<sup>61</sup> In accordance with Art. 95 (1), LOO the contract which is contrary to the Constitution, the laws and the good customs is null and void (absolute nullity) unless the aim of the breached rule does not refer to something else.

<sup>62</sup> Judgment of the Court (First Chamber) of 17 December 2009. *Eva Martín Martín v EDP Editores SL*. ; Case C-227/08 ; European Court reports 2009 Page I-11939.

court from declaring, of its own motion, that a contract falling within the scope of that directive is void on the ground that the consumer was not informed of his right of cancellation, even though the consumer at no stage pleaded that the contract was void before the competent national courts. Such a position of the court is only possible if it is to be established that contracts concluded following omission of full disclosure are to be absolutely null. The Court takes a position that on the one hand, that provision comes under the public interest in justifying a positive intervention by the national court in order to compensate for the imbalance between the consumer and the trader in the context of contracts concluded away from business premises. On the other hand, a measure which consists in declaring the contract in dispute void can be categorised as ‘appropriate’ within the meaning of the third paragraph of Art.4 of Directive 85/577, in that it penalises the failure to comply with an obligation which is essential to create binding intent on the part of the consumer and to attain the level of protection sought by the Community legislature. However, that finding, in the opinion of the Court, does not rule out the possibility that other measures might also ensure that level of protection, such as, for example, the resetting of the relevant time limits relating to the cancellation of the contract. In addition, the national court may also have to take account, in certain circumstances, of the consumer’s wish not to have the contract at issue cancelled.

In the process of the development of the draft of the Macedonian Civil Code, Book III: Law on Obligations, this was reflected by including alternative (proposing amendments to) the stated Art. 57 which include the fraudulent non-disclosure as fraud thus leading to absolute nullity of the contract.

## **2. Specific measures**

Specific measures that affect the rights of the consumers exist within the specific Directives.

CRD in two articles deals with the issue, in a limited scope as elaborated. Art. 6(6) stipulates a right for the consumer not to bear the charges or costs in the cases when trader has not complied with the information requirements on additional charges or other costs or on the costs of returning the goods in the cases of off-premises and distance contracts. The omission of information on the right of withdrawal (Art. 10) leads to extension of the period when such right may be exercised. This is adequately transposed in the Macedonian LCP (Art. 90).

The start of the computation of the withdrawal period is to be adjusted to the receipt of the information also for the consumer credits. As provide by Art. 14 (1) of the Consumer Credits Directive and the Macedonian law<sup>63</sup>, the consumer has a period of 14 calendar days in which to withdraw from the credit agreement without giving any reason and this period begins - either from the day of the conclusion of the credit agreement, or - from the day on which the consumer receives the contractual terms and conditions and information in accordance with Art. 10, if that day is later than the date of the conclusion of the contract.

However, in the context of the consumer credits, beside the civil law sanctions of the failure to provide information (related to the avoidance of the contract and exercise of the withdrawal right), the Macedonian legislation sets rather strict administrative penalties also. This is in accordance with Art. 23 of the Directive, requiring the Member States to lay down the rules on penalties, which must be effective, proportionate and dissuasive, applicable to infringements of the national provisions adopted pursuant to this Directive and take all

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<sup>63</sup> In accordance with Art.14(5) this shall not apply for termination of distance contracts regulated by the Law on Distance Financial Services, but the provision of Art.15(5), in accordance with Art.44 shall be applicable as of the day of the association with the European Union.

measures necessary to ensure that they are implemented. Thus, in accordance with Art. 29 the surveillance of the implementation of the provisions of the this law is to be carried out by the Ministry of Economy, while the inspection of the creditors which operate under permission issued by the Minister of Economy is performed by the State Market Inspectorate. The inspection, to be carried out upon request of a consumer, the Consumers' Protection Organisation or ex officio, includes *inter alia* control of the advertising, pre-contractual information, the offer and the content of the consumer credit contract. In the cases when the Inspectorates find that the creditor or the intermediary does not uphold its obligation or acts contrary thereto, it shall immediately but not later than 10 day notify the Minister of Economy. The Minister, in accordance with Art. 30, shall withdraw the permit for provision of consumer credit and prescribe measure for forbiddance for operation in 30 days if it is established that the advertisements do not include the relevant information or the information is inaccurate and outdated; the contract includes provision that are contrary to the requirements of this Law; the form and the content of the contract is not in accordance with the requirements of the Law. It will be considered a misdemeanour and sanction with fine ranging from 1.500 to 3.000 EUR, in accordance with Art. 36, when the creditor or does not include the relevant information in advertisements; does not provide the general pre-contractual information or the pre-contractual information related to the certain credit agreements in the form of an overdraft facility and for certain specific credit agreements.

Such administrative penalties may be seen also for the failure to provide the pre-contractual information or the related notification for the distance and off-premises contract. The fines are even higher. Thus, in accordance with Art.136(1)(30) of the LCP, the trader shall be sanction with fine ranging from 2.000 to 4.000 euro if it failed to provide to the consumer wither confirmation on prior notification for the distance contracts. In the cases of the notification related to the off-premises contract, in accordance with Art. 137(1)(16), the trader shall be fined with 1.200 EUR if it fails to notify the consumer on their right to terminate the contract by a statement in the moment of the conclusion of the contract.

#### **IV. Conclusions**

In today's market is not easy to be a consumer. The right to be informed is one of the basis of the consumer protection and it's uphold by the traders will correct the imbalance that exist. However, the amount of information to be provided to the consumer at times seems overwhelming. The lists of what the consumer is to be notified about, when numbered, reaches at times more than 20 pieces of information that need to be read and understood, In such flood of information, there is always a danger the consumer to 'drown' or simply get lost. It is yet to be determined does more information guarantee protection or the average consumer when faced with such enormity of information will ignore parts (or most) of it. Drawing a line between what is essential information and what will be circumstantial will however be difficult task. Such enormity of information makes the 'life' difficult for the traders as well, but also may affect the effectiveness of the enforcing agents who are to assess if thy have been provided completely.

If we take in general, that the pre-contractual information requirements are set as they are, the problem that may arise regards the timing of their provision. The Directives and the national legislation operate with ranging terminology which may be differently understood which includes prior to the conclusion of the contract, before the conclusion of the contract, in the conclusion of the contract. There are not clear rules of how much time actually is to be left to the consumer for so to say absorbing the information and making educated choice. The specific situation in which the consumer is when concluding off-premises or distance contract explains why there is a need for single set of rules EU wide, thus in a way justifies the maximum (full) harmonisation approach in this regard of the Consume Rights Directive.

Question arises however what will be the result of the implementation of the rules on the 'all other contracts' of CRD in the legislation of the member states (including the candidate countries, who by virtue of the Stabilisation and Association Agreements signed with the European Communities and their member states are obliged to approximate their national legislation) and will the consumer of one member states receive the same quantity and quality of information in other. If the full harmonisation is the primary aim (Recitals (7) of the CRD) leading to legal certainty of both traders and consumers and decreasing the compliance costs, can one say for sure that such could be achieved with the minimum harmonisation rule which exist in the case of 'all other contracts'. The Macedonian legislation in the field of consumer protection will for certain need amendments regulating these specific issues. First and foremost the amendments to be introduced should provide for the full scale of rights guaranteed under the Consumer Rights Directive for the Macedonian consumers too. In regard to the package travel information requirements, the long application of the national legislation in the member countries have provided a standardized practice and developed awareness within the consumers on what information to expect and request. The most complicated, from a consumer perspective, information scheme exists when it comes to the consumers' credits, however the issues are simplified with the provision of standardised form.

The issue of the sanctions is not an issue or a surprise any more. More and more often we are faced with the fact that failure to act in accordance with the rules (predominantly of civil law nature) in the conclusion or in the performance of consumer contracts lead not only to civil law sanctions but also to administrative sanctions. The application of both is not excluded. What makes the situation complicated is the fact that the inspectors will need sound knowledge not only of the administrative, but also of the civil law. Completion of such task may prove to be easier said than done.

Last but not the least should the Macedonian Law on Obligations be amended to include specific requirements for pre-contractual information or not? The introduction of the specific pre-contractual information requirements for consumer contracts will for certain create yet another 'construction site' in the field of civil law legislation in Europe. At the moment we do not see enough reasons to justify such approach. We find that the general rules of the law on obligations are sufficient to adequate support and uphold the rights of the consumer to be informed. The sanctions provided and available are sufficient to enforce such right. The only point where further consideration should be made is whether to specifically identify the failure to provide information as fraudulent, thus précising that it will lead to absolute nullity of the contract.