

Legal Alert

January 22nd, 2019

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Draft GEO on consumer protection: proposed increase in the sanctions to be applied by ANPC

The National Consumer Protection Authority (ANPC) has issued on 14 January, on its own web-site, in a decisional transparency procedure, an emergency government ordinance proposal regarding the amendment and supplementation of certain legal enactments governing consumer protection.



Draft GEO on consumer protection: proposed increase in the sanctions to be applied by ANPC

The relevant amendments proposed under the emergency government ordinance envisage mainly the increase of applicable sanctions, as follows:

- The amendments which may be imposed on the basis of GO 21/1992 regarding consumer protection may be of maximum 2% of the turnover, respectively 4% for repeated and serious breaches (i.e. in case the action led to the serious harm and in a repeated manner of the interests of more consumers or the breach had as consequence the physical harm of one or more persons), as well as in case where the economic agent did not comply with the measures imposed within the terms and conditions included in the sanctionatory minutes and following the final decisions issued by the competent courts-of-law;
- The measures imposed under the sanctionatory minutes will apply to all outlets (working points) pertaining to the controlled entity;
- The controlled entities have the obligation to display on the main entrance door, for a duration of 30 days, a notice with respect to the measures imposed through the sanctionatory documents;
- The sanctions which may be imposed under Law 363/2007 regarding unfair commercial practices may be of maximum 3% of the turnover for certain unfair commercial practices (those aggressive and those which are not misleading), respectively 4% of the turnover for the misleading commercial practices, as well as for the failure to observe the measures imposed by ANPC.

Commonly for the two legal enactments previously mentioned, it is important to specify the fact that the legislative proposal does not grant any longer the possibility for the entities found in breach of these enactments, to pay half of the minimum fine thus imposed.

Other amendments, which may also be of interest, are:

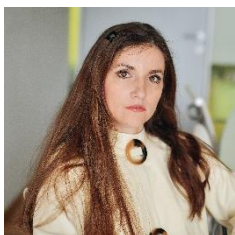
- In case where the complementary measure regarding the definitive closure of the unit is decided, the sanctionatory body can impose for the company, its director and its shareholders, the prohibition to perform the economic activities provided by CAEN Code for which the controlled entity has been sanctioned, for a period of up to 3 years;
- The measures disposed under art. 55 (including temporary/definitive cease from commercialization or products) shall not be, directly, through delegation, by order or by decision, decided any longer by the ANPC territorial unit leader – meaning that they will be directly imposed, without delegation and without any order or decision, by the controlling agents, through the sanctionatory minutes;
- The reduced price sales must specify the initiating period and the final date, as well as the type of garments subject of the reduced price sale, in case where the operation does not regard all the products in the selling point;
- In case of food products originated outside EU, before placing the product on the market, another endorsement from ANPC (General Department of Market Surveillance and European Harmonization) has to be obtained, following the proposal issued by LAREX, attesting the conformity with the labeling information regarding composition, based on laboratory analysis and enclosing documentation;
- The measuring instruments used for determining the quantity of bulk products have to be clear and visible for the consumer.

In addition, for the services providers, the following amendments are relevant:

- The value of fines which may be imposed under Law 193/2000 regarding unfair clauses can be of maximum 5% of the turnover in case of breaching the interdiction to include unfair clauses in the contracts concluded with the consumers;
- Also, another impact amendment proposed under the emergency government ordinance, is that, in case where the competent court-of-law finds unfair clauses in the contract subject of its assessment, it may oblige the controlled entity to amend all the contracts in course of performance, as well as to remove the unfair clauses from the respective contracts, meant to be used in the business activity and without having any longer the possibility to include such clauses within the new contracts to be used in its business. Also, the court may decide the full reimbursement to the consumers of the amounts claimed on the basis of unfair clauses in the respective contracts.

Considering that until 25 January feedback and comments may be sent in connection with this legislative proposal, please let us know whether you would like us to help you in this regard.

For further questions regarding the aspects mentioned in this alert, please contact us.



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