

PRE-CONTRACTUAL INFORMATION IN CONTRACTS CONCLUDED WITH ENERGY CONSUMERS

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Abstract. *The provision of pre-contractual information in contracts concluded with consumers of energy resources derives from 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 Directive 85/577 / EEC of the Council and Directive 97/7 / EC of the European Parliament and of the Council, sectoral directives applicable in the energy sectors, the Civil Code of the Republic of Moldova and other acts national regulations.*

The article addresses the issue of the importance of providing pre-contractual information and regulating specific relationships regarding raising the level of consumer protection, these being the purpose of contracts concluded between trader and consumer, including contracts for the supply of energy resources.

Full harmonization of key regulatory issues should significantly increase legal certainty for both consumers and traders. Both consumers and traders should thus be able to rely on a single regulatory framework, based on clearly defined legal concepts, governing certain aspects of the relationship between traders and consumers.

Keywords: *consumers, energy resources, distance contracts, pre-contractual information, supply, quality.*

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Pre-contractual information in consumer contracts, including energy resources, as well as pre-contractual negotiation play a considerable role. As the complexity of the object of the future contract increases, the intensity of the negotiations prior to its conclusion will increase. In this regard, the Civil Code of the Republic of Moldova stipulates that the person is free to negotiate and is not liable only for the fact that no agreement has been reached. The person who is engaged in negotiations has the obligation to negotiate in good faith and not to break the negotiations contrary to good faith (Article 1025 para. (1-2) of the Civil Code).

Any clause that excludes or limits this obligation is struck by absolute nullity. Such a distinction is made even by the legislator in art. 1027 para. (1) and (2) of the Civil Code according to which "The contract is considered concluded if the parties have reached an agreement on all its essential clauses. It is essential the clauses that are established as such by law, which arise from the nature of the contract or on which, at the request of one of the parties, an agreement must be reached" (Article 1025 para. (1-2) of the Civil Code).

As we see between the pre-contractual phase which may involve a progression or regression in the sense of achieving contractual consensus, on the one hand, and the conclusion of a contract there is an indissoluble link. Regardless of the final solution of the stage of reaching the contractual consensus, it takes place under the sign of the freedom of negotiations between the parties.

In contracts concluded with consumers it is necessary to take into account the presence of standard clauses. Here, too, the Direct Civil Code stipulates that if the parties have reached an agreement, but both the offer and the acceptance refer to the standard clauses of that party, the contract is still considered concluded. Standard clauses are part of the contract in so far as the standard clauses of one party do not conflict with the standard clauses of the other party. However, the contract shall not be deemed to have been concluded if one of the parties:

- has expressly indicated in advance, and not only by way of a standard clause, the intention not to be bound by the contract if the intended circumstance arises, or
- inform the other party of this intention without undue delay (Article 1025 para. (1-2) of the Civil Code).

However, the limits of pre-contractual freedom are given by the existence of certain legal or conventional obligations, explicit or implicit. But these legal obligations in the case of contracts concluded with consumers must not be to the detriment of the principle of freedom of contract.

We referred here to the legal obligations as the conclusion of contracts with consumers of energy resources can take place only on the basis of the mandatory contractual clauses, approved either by law or by the decisions of the regulatory authority.

Although the institution of the electricity supply contract as a contract under which electricity is supplied to the consumer is recognized by law, the existence of "binding contractual clauses" must not prevail over pre-contractual information requirements and the principle of negotiating such contracts.

Although under the existing legal framework all final consumers are eligible to be supplied with electricity by any chosen supplier and have the right to supply electricity on a contractual basis, in terms of accessibility, continuity and reliability, as well as their right to conclude contracts with any supplier of your choice (Art. 63 para. (1-2) of Law no. 107 of 27.05.2016), the freedom to contract is largely vitiated by these mandatory clauses imposed on the parties by the regulatory authority.

Thus, the supply of electricity to final consumers is carried out only on the basis of the electricity supply contract concluded between the supplier and the final consumer in accordance with the sectoral law and the Regulation on the supply of electricity (Art. 63 para. (1-2) of Law no. 107 of 27.05.2016). The principles underlying the contracting provided for in the above-mentioned Regulation are also provided by law and they refer to the following:

- the supplier is obliged to elaborate the standard contractual clauses of the electricity supply contract, proposed for negotiations to the final consumers;
- the standard contractual clauses are elaborated in accordance with the law and with the Regulation on electricity supply (based on the obligatory clauses);
- the binding contractual terms of the electricity supply contract concluded between the universal service provider or supplier of last resort and final consumers shall be approved by the Agency (Art. 63 para. (1-2) of Law no. 107 of 27.05.2016).

In essence, all electricity contracting conditions are strictly determined by both the Law and the Regulation on the supply of electricity, and the contracting parties do not have the right to derive in the contracting process from the provisions of the Mandatory Clauses of the electricity supply contract to the consumer. and the mandatory clauses of the contract for the supply of electricity to the non-household consumer. This normative framework is a contradictory one, it affects the principle of contractual freedom and the conclusion of electricity supply contracts, diminishing the role and importance of pre-contractual information.

The pre-contractual information requirements in contracts concluded with consumers of energy resources are established by Directive 2011/83/EU, sectoral directives applicable in the fields of energy, the Civil Code of the Republic of Moldova and other national regulations.

Full harmonization of key regulatory issues should significantly increase legal certainty for both consumers and traders. Both consumers and traders should thus be able to rely on a single regulatory framework, based on clearly defined legal concepts, governing certain aspects of the relationship between traders and consumers within the Union. The effect of such harmonization should be to remove barriers that originate in the fragmentation of rules and to complete the internal market in this area. Those barriers can only be removed by establishing

uniform rules at Union level. In addition, consumers should enjoy a high common level of protection throughout the Union (Directive 2011/83 / EU).

Directive 2011/83/EU lays down rules on the information to be provided in the case of distance and off-premises contracts, as well as non-distance and off-premises contracts. By the same token the directive stated that contracts for district heating should be covered by the directive, similar to contracts for the supply of water, gas and electricity. Central heating means the supply of thermal energy, inter alia in the form of steam or hot water, from a central source of production, through a transmission and distribution system to several buildings, for the purpose of heating (Directive 2011/83 / EU). For these reasons the requirements relating to pre-contractual information is also applicable in the case of the conclusion of such contracts. Recital 34 of Directive 2011/83/EU states that, in providing pre-contractual information, 'the trader should take into account the specific needs of consumers who are particularly vulnerable as a result of their mental, physical or psychological disability, age or their credulity, in a way that the trader could reasonably foresee. However, the fact that such specific needs are taken into account should not lead to different levels of consumer protection".

The Consumer Rights Directive 2011/83/EU covers all the information requirements set out in Article 7 (4) of the Unfair Commercial Practices Directive 2005/29/EC, which requires an invitation to purchase to contain certain information, if not already emerges from the context. This information includes: the main characteristics of the product, in accordance with the communication medium used and the product concerned; the address and identity of the trader; price, including taxes; methods of payment, delivery, execution; the merchant's complaint handling policy (if it differs from the due diligence requirements); and, where applicable, the existence of the right of withdrawal. Therefore, when providing pre-contractual information in accordance with the Consumer Rights Directive, a trader will also comply with the information requirements of the Unfair Commercial Practices Directive. This will be without prejudice to the information requirements of the Unfair Commercial Practices Directive on the invitation to purchase before the pre-contractual stage, for example the advertising stage.

For contracts negotiated in commercial premises, Article 5 allows traders not to provide information that "already emerges from the context". The concept of "already out of context" information is also used in the Unfair Commercial Practices Directive. The Unfair Commercial Practices Directive (Directive 2005/29/EC) of 2009 mentions the geographical address and the identity of the trader as information that can sometimes be considered as "obvious or out of context", for example the address of a shop or restaurant where the consumer is already located. They also include examples of goods whose main characteristics are obvious only by looking at them (Article 7 (4)).

For off-premises contracts, Article 7 (1) further requires that pre-contractual information be "legible and written in plain, intelligible language" and for distance contracts Article 8 (1) requires that the information be provided to the consumer "in a manner appropriate to the means of distance communication used, using simple and intelligible language. To the extent that the information is presented on a durable medium, it shall be legible".

Table1. Consistency of the consumer protection measures provided in Law no. 107/2016 with EU Directive 2009/72 (Directiva 2009/72/CE)

EU Directive 2009/72	Law no. 107/2016	Comments
<p>Annex I.</p> <p>Consumer protection measures aim to ensure:</p> <p>a) the right to conclude with the electricity supplier a contract specifying:</p> <ul style="list-style-type: none"> - identity and address of the supplier; - the services provided, the level of quality of the services provided, as well as the deadline for the initial connection; - the types of maintenance services offered; - the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained; - the duration of the contract, the conditions for renewal and interruption of services and the contract and whether there is a right of free termination of the contract; - any compensations and forms of reimbursement that apply if the quality levels of the services provided for in the contract are not met, including inaccurate invoicing and late payment; - the arrangements for initiating procedures for settlement of disputes in accordance with point (f); 	<p>Art. (2) The contract for the supply of electricity must obligatorily contain the following:</p> <p>a) the name and address of the supplier;</p> <p>b) the object of the contract, the quality parameters of the supplied electricity, the hourly quantities of contracted electricity;</p> <p>c) the means by which up-to-date information on the prices in force can be obtained;</p> <p>d) the cases and conditions of interruption of the electricity supply, of disconnection and reconnection to the electrical networks of the electrical installations of the final consumers;</p> <p>e) the duration of the electricity supply contract, the cases and the manner of extension, modification, suspension and termination of the respective contract, including to expressly provide the right of the final consumer to terminate the contract unilaterally and free of charge;</p>	<ul style="list-style-type: none"> - to replace the word "name" with the word "identity"; - within the meaning of the Directive, it is considered that the services provided must correspond to the level of quality of the services provided and not to the quality parameters of the electricity provided; - up-to-date information refers to all applicable tariffs and maintenance charges and not only to up-to-date information on prices in force; - The Directive does not refer to cases of interruption of electricity supply, but only to conditions;
<p>- information on consumer rights, including complaint handling and all information referred to in this point, clearly communicated in invoices or on the websites of electricity undertakings.</p> <p>The conditions must be fair and communicated in advance. In any case, this information should</p>	<p>f) provisions regarding the manner of notification by the supplier of the final consumer regarding the increase of the electricity supply price before its application;</p> <p>g) the types of maintenance services, if they are offered;</p> <p>h) the payment terms, the payment methods, the cases in</p>	<ul style="list-style-type: none"> - The Directive refers to the modalities for initiating dispute settlement procedures and not to the modalities for initiating dispute settlement procedures;

<p>be provided before the conclusion or confirmation of the contract. Where the contract is concluded through intermediaries, the information referred to in this point shall also be provided before the conclusion of the contract;</p>	<p>which the supplier is entitled to impose the preventive payment for the electricity consumption, as well as the measures that will be taken by the supplier in case of non-compliance by the final consumer of the contractual obligations;</p> <p>i) any compensation and reimbursement arrangements which apply if the supplier fails to fulfill his contractual obligations, including in the event of incorrect invoicing, or if the supplier fulfills his contractual obligations late or in a defective manner;</p> <p>j) the modalities of initiating the procedures for solving the misunderstandings related to the non-execution or defective execution of the contractual clauses;</p> <p>k) the rights and obligations of the supplier and the final consumer, as well as information on the management of complaints.</p> <p>(3) The contractual conditions must be fair and presented to the potential final consumer before the conclusion of the electricity supply contract. If the contract for the supply of electricity is concluded by representatives, the final consumer must be notified in advance of the contractual conditions.</p>	<p>- the conditions must be fair and communicated in advance not only before the conclusion of the contract but also at the confirmation of the contract.</p>
<p>(b) the right to be duly notified of any intention to change the terms of the contract and to be informed, at the time of notification, of the right to terminate the contract. Service providers shall notify subscribers of any tariff increases, directly and in a timely manner, no later than the end of the first normal billing period following the entry into force of the increase, in a</p>	<p>Article 70 para. (11) The supplier is obliged to notify the final consumer about the proposal to modify the electricity supply contract at least 15 working days in advance, as well as about the fact that the latter is entitled not to accept the modification or to terminate the contract for the supply of electricity in case of</p>	<p>The Directive does not refer to the first normal billing period following the entry into force of the increase, in a transparent and easy to understand way.</p>

<p>transparent and easy to understand manner. Member States shall guarantee customers the right to terminate any contract if they do not accept the new conditions notified by the electricity supplier.</p>	<p>disagreement. The supplier is obliged to notify, directly, transparently and intelligibly, the final consumers about any price increase no later than the end of the first billing period following the entry into force of the increase.</p>	
<p>(c) receiving transparent information on prices and tariffs, as well as on the general conditions of access to and use of electricity services;</p>	<p>Article 69 para (2) Each supplier is obliged to have service centers for final consumers so that the latter receive all the necessary information to allow them to make use of the rights enshrined in law and by normative acts in the field, including by regulatory acts approved by the Agency, in particular: a) information on the prices charged, as well as on the standard contractual clauses, the conditions to be met for concluding the electricity supply contract and other relevant information;</p>	<p>The Directive refers only to the prices and tariffs charged, as well as to the general conditions of access to electricity services, but not to the standard contractual clauses, the conditions to be met for the conclusion of the electricity supply contract.</p>
<p>(d) a wide range of payment methods, which do not unduly discriminate between customers. Prepay systems are fair and adequately reflect probable consumption. Any differences in terms and conditions reflect the costs to the provider of the different payment systems. The general conditions are fair and transparent. They are presented in clear and easy-to-understand language and do not include non-contractual barriers to the exercise of customer rights, such as excessive contractual documentation. Customers are protected against incorrect or misleading sales methods;</p>	<p>Article 69 para. (2) b) information regarding the payment methods, the possible consequences in case of non-payment of the bills for the consumed electricity, as well as regarding the situations in which the supplier is entitled to receive the preventive payment for the supplied electricity to the final consumers;</p>	<p>Prepayment schemes are fair and adequately reflect probable consumption but not established as possible consequences for non-payment of electricity bills, as well as for situations in which the supplier is entitled to charge the pre-payment for electricity supplied.</p>

<p>(e) the possibility to change supplier free of charge;</p>	<p>Article 69 para. (2) c) information on the procedure for changing the supplier, on the right of final consumers to change supplier unconditionally and without charging a fee, as well as on the right of the final consumer to receive, no later than two weeks after changing supplier, a final invoice of payment for electricity consumed;</p>	<p>The Directive does not provide for the possibility of unconditional change of supplier.</p>
<p>(f) the possibility of transparent, simple and inexpensive complaint handling procedures. In particular, all consumers are entitled to a high standard of service provision and complaint handling by their electricity supplier. These out-of-court dispute resolution procedures allow for the correct and prompt settlement of disputes, preferably within three months, and provide, in all justified cases, for a system of reimbursement and / or compensation. These procedures should, where possible, comply with the principles set out in Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to bodies responsible for out-of-court settlement of disputes with consumers para. (3);</p>	<p>Article 69 para. (2) d) information on the ways of out-of-court settlement of possible disagreements with final consumers, on the compensations to be paid to final consumers in case of breach by the supplier of its obligations, as well as on deadlines for resolving complaints received from final consumers;</p>	<p>The Directive deals with the settlement of complaints but not with the means of out-of-court settlement of any disputes.</p>
<p>(h) that they have access to their own consumption data and that they can grant access to the measurement data, by express agreement and free of charge, to any registered supply undertaking. The party responsible for data management is obliged to provide this data to the undertaking concerned. Member States shall determine the format for the presentation of the data and the procedure for access by suppliers and consumers to that data. No additional costs can be charged to</p>	<p>Article 55 para. (3) System operators keep records of electricity using only metrologically verified measuring equipment, the types of which are included in the State Register of measuring instruments, published in the Official Gazette of the Republic of Moldova and placed on the official website of the National Institute of Metrology. Article 55 para. (7)</p>	<p>According to the Directive, Member States shall determine the format of the presentation of the data and the procedure for access by suppliers and consumers to that data. No additional costs can be charged to consumers for this service. In the Republic of Moldova all</p>

<p>consumers for this service.</p>	<p>Producers and final consumers are obliged to grant access to system operators' representatives to measuring equipment that is within their property in order to exercise the functions established for system operators in this law and in the Regulation on the measurement of electricity for commercial purposes.</p> <p>Article 55 para. (8)</p> <p>Producers and final consumers are obliged to keep intact and not to intervene on the measuring equipment installed within the limits of their ownership. If the damage to the measuring equipment is due to the fault of the consumer, he will bear the costs of uninstallation, repair, metrological verification, installation or replacement of the damaged measuring equipment.</p>	<p>expenses are included in the tariff.</p>
<p>(i) adequate information on actual electricity consumption and actual costs, sufficiently frequent so that they have the opportunity to regulate their own electricity consumption. That information shall be communicated at appropriate intervals, taking into account the capacity of the customer's measuring equipment and the energy product concerned. The cost-effectiveness of these measures shall be taken into account. No additional costs can be charged to consumers for this service.</p>	<p>Article 69 para. 2 letter e) information on the ways in which the supplier is to communicate to the final consumers the data regarding the real electricity consumption and the real costs;</p> <p>Article 69 para. (8) The supplier is obliged to indicate in the payment invoice, in the promotional materials, the information regarding the electricity consumption of the final consumer, so that he will have the possibility to regulate his own electricity consumption, regarding the applied prices. , as well as on the cost of electricity consumed. That information shall be communicated at appropriate intervals, taking into</p>	<p>Appropriate information on actual electricity consumption and actual costs, sufficiently frequent, is related only to the possibility to regulate their own electricity consumption.</p>

	<p>account the capacity of the measuring equipment installed at the final consumers and the periodicity of reading the indications of the measuring equipment, as well as the cost-effectiveness of these measures. The provider is prohibited from receiving additional payments for this service from final consumers.</p>	
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As we see from the Table above, the consumer protection measures provided in Law no. 107/2016 do not comply with EU Directive 2009/72.

The Moldovan legislator harmonizing the national legislation on pre-contractual information with the European Directives did not take into account the practice of other states in this field. For example, the legislation of the Romanian state has established minimum information that the supplier is obliged to provide in the invoice, and the invoice issued by the supplier to final customers or its annex must contain, in a clear and easy to understand form, at least the following information. :

- a) the identification and contact data of the supplier and of the final customer;
- b) the number and date of issuing the invoice;
- c) the due payment term;
- d) the period for which the consumed energy was billed;
- e) the manner in which the quantity of invoiced electricity was established, respectively measurement, estimation or self-reading, in the case of final customers at which the reading interval is longer than the billing one;
- f) the significance of each payment obligation included in the invoice, respectively invoiced active energy, invoiced reactive energy, active / reactive energy corrections, power tax, penalties for exceeding the contracted powers, penalties for deviations from the consumption forecast, penalties for delay in payment of bills, etc.;
- g) invoice quantities, specifying whether they represent measured, estimated or contracted values;
- h) the units of measurement and the prices applied for each invoiced quantity;
- i) regulated tariffs for transmission and system and / or distribution services, which are part of the selling price / tariff, if applicable;
- j) the legal price basis, respectively the document by which the regulated prices and the taxes applied in the invoice were approved / endorsed;
- k) the amounts resulting for each invoiced quantity;
- l) green certificates, contribution for high efficiency cogeneration, VAT, excise and other taxes provided by the legislation in force;
- m) the total payment value, specifying the total quantities of electricity invoiced on the invoicing interval;
- n) information on the payment amounts for which the due date was exceeded at the time of issuing the invoice;
- o) the identification code of the place of consumption;
- p) the unique identification code of the measuring point;
- q) methods of payment of invoices;
- r) information on the rights and remedies available to final customers in case of dispute.

In **CONCLUSION**, I believe that in order to return to normal, it is necessary to review the entire primary and secondary framework for pre-contractual information, as well as to conclude contracts for the supply of energy resources.

REFERECNCES

Article 1025 para. (1-2) of the Civil Code of the Republic of Moldova no. 1107 of 06.06.2002, published in the Official Gazette no. 82-86 art. 661.

Art. 63 para. (1-2) of Law no. 107 of 27.05.2016 regarding electricity, published in the Official Gazette no. 193-203 art. 413

Recital 7 of 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

Commission staff working document: Guidelines for the implementation / transposition of Directive 2005/29/EC on unfair commercial practices, 3 December 2009, SEC (2009) 1666. This document is currently being revised. An updated version of the Guidelines is scheduled for publication by the end of 2014

For more information, see pages 49-52 of the Guidelines on unfair commercial practices in relation to the information requirements of Article 7 (4)

Anexa nr.1 din Directiva 2009/72/CE a Parlamentului European și a Consiliului din 13 iulie 2009 privind normele comune pentru piața internă a energiei electrice și de abrogare a Directivei 2003/54/CE, publicată în Jurnalul Oficial al Uniunii Europene, L 211/55 din 14.08.2009.