

## Tax & Legal Weekly Alert

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#### Legal Updates

##### **Important amendments to legislation on consumers' rights under contracts concluded with traders with effect from 13 June 2014**

On 11 June 2014 Emergency Government Ordinance no. 34/2014 on consumers' rights under contracts concluded with traders, amending and supplementing certain enactments ("**EGO no. 34/2014**"), was published in the Official Gazette no. 427. EGO no. 34/2014 transposes at the national level the provisions of Directive 2011/83/EU of the European Parliament and of the Council as of 25 October 2011 on consumer rights, and upon entry into force on **13 June 2014** certain enactments have been repealed, including GO no. 130/200 on the protection of consumers in respect of concluding and performing distance contracts – [page 2](#)

##### **Possible anti-competitive conduct by professional associations**

In May 2014 the Loan Market Association, an international professional association operating in the banking sector, issued a statement regarding possible breaches of competition law by associations of undertakings established in the banking system. Following this statement, we detail hereinafter possible anti-competitive practices to which members of a professional association may be exposed, irrespective of their sector, namely:

- Risk of coordination of competitive behavior on the market (Cartel);
- Exchange of sensitive information from a competition perspective between competitors;
- Exclusion from association of other potential competitors in lack of objective and justified criteria.

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## Important amendments to legislation on consumers' rights under contracts concluded with traders with effect from 13 June 2014

On 11 June 2014 Emergency Government Ordinance no. 34/2014 on consumers' rights under contracts concluded with traders, amending and supplementing certain enactments ("EGO no. 34/2014"), was published in the Official Gazette no. 427. EGO no. 34/2014 transposes at the national level the provisions of Directive 2011/83/EU of the European Parliament and of the Council as of 25 October 2011 on consumer rights, and upon entry into force on **13 June 2014** certain enactments have been repealed, including GO no. 130/200 on the protection of consumers in respect of concluding and performing distance contracts.

Among the most important amendments brought by EGO no. 34/2014 are the following:

- Unlike the previous applicable enactment, EGO no. 34/2014 is also applicable to contracts for electronic communications or certain services as well as for accessing and connecting to the public electronic communications networks and also for providing terminal equipment related to services performed.
- EGO no. 34/2014 provides more **detailed information that traders must provide to consumers**, both pre-contractual and contractual information, and also **specific formal requirements** for concluding valid contracts.
- **The consumer has the right of withdrawal** (previously the right of unilateral termination) which shall be exercised **within 14 days**. The trader's failure to provide the consumer with the information related to the right of withdrawal triggers an extended withdrawal period of 12 months starting from the end of the initial withdrawal period of 14 days.
- The right of withdrawal may be exercised under one of the following ways, with the trader making available (in electronic form) to the consumer the corresponding options:
  - i. **the model withdrawal form** (Annex of EGO no. 34/2014);
  - ii. any other **unequivocal statement setting out the consumer's decision to withdraw from the contract**.

In such situations, the trader shall communicate to the consumer, without delay, under a durable medium, a receipt acknowledging such withdrawal. It is important to note that, under EGO no. 34/2014, the burden of proof for exercising the right of withdrawal shall be on the consumer.

- In case of exercising the withdrawal right, the trader **shall reimburse all payments received** from the consumer **no later than 14 days** from the day on which he is informed of the consumer's decision to withdraw from the contract.
- As a general rule, the consumer shall only bear the direct cost of returning the goods. Additionally, the consumer is also liable for:
  - i. the supplementary costs triggered by another type of delivery than the standard delivery offered by the trader, expressly opted for by the consumer; and
  - ii. any diminished value of the returned goods, resulting from the handling of those goods.

- EGO no. 34/2014 expressly provides that the consumer's express consent has to be previously obtained for any additional payments related to the trader's main contractual obligation initially agreed upon; otherwise the consumer is entitled to reimbursement of such payments. Additionally, traders are not allowed to charge consumers for using certain means of payment if those fees exceed the cost borne by the trader for using such means.
- Unlike the previous legislation, EGO no. 34/2014 provides additional exceptions with respect to contracts under which the right of withdrawal cannot be exercised, namely:
  - i. the supply of sealed goods which are **not** suitable for return due to health protection or hygiene reasons and were unsealed after delivery;
  - ii. contracts where the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance; or
  - iii. the supply of digital content which is **not** supplied on a tangible medium if the performance has begun with the consumer's prior express consent and his acknowledgment that he thereby loses his right of withdrawal.
- With respect to matters of passing on risks, the risk of loss or damage of the goods shall pass on to the consumer when acquiring the physical possession of the goods. As an exception, the risks are passed on to the consumer upon delivery to the carrier chosen by the consumer.
- Unless the parties have agreed otherwise on the time of delivery, the trader shall deliver the goods without undue delay, but in any case no later than 30 days from the conclusion of the contract. Otherwise, the consumer shall call upon the trader to make the delivery within an additional period of time appropriate to the circumstances.
- In case of termination of the contract, the trader **shall reimburse** the consumer **all sums** paid under the contract no later than **7 days** as of the date the decision of termination was communicated.
- In case of failure to comply with the provisions of EGO no. 34/2014, fines up to Lei 5,000 can be applied. Minor offences are ascertained and penalties applied by the National Authority for Consumer Protection and the National Authority for Management and Regulation in Communications (for the contracts on electronic communication services concluded by suppliers with consumers).

We remain at your disposal for identifying legal solutions for any specific situation your company may face regarding these matters.

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## Possible anti-competitive conduct by professional associations

In May 2014 the Loan Market Association, an international professional association operating in the banking sector, issued a statement regarding possible breaches of competition law by associations of undertakings established in the banking system. The statement can be accessed at the following [link](#).

Since professional associations' meetings may constitute the premises for the emergence of horizontal agreements regardless of the field where they are established, we detail hereinafter possible anti-competitive practices to which members of a professional association may be exposed, irrespective of their sector.

### 1. Cartel

Establishing a professional association does not raise competition law issues by itself. However, the professional association could be a convenient forum for competitors to meet in order to coordinate their market behavior, i.e. fix prices, limit the provision of services, share customers and geographic markets and align their behaviors during biddings.

In order to limit the risk of anti-competitive practices within professional associations we recommend caution in managing the following aspects:

- Approving the agenda of the meetings in advance and transmitting it to all members;
- Discussing in the meeting only those aspects which serve the purpose of the association;
- Drafting the minutes of the meetings such that conversations of the members and their intention to apply a particular practice are clearly recorded.

### 2. Exchange of sensitive information from a competition perspective

Exchanging sensitive information which has not been made public can be performed directly (through discussions between competing companies) or indirectly (through professional associations). In this context, sensitive information that should not be sent to competing companies can be related, for example, to prices, customer lists, production costs, quantities, turnovers, sales, marketing plans, investments, technologies or research and development programs.

From a competition law perspective, the risk refers to an indirect effect on competition by coordinating the market behavior, since it is believed that exchanging information reduces the uncertainty regarding competitors' actions and the independent market behavior.

Preventively, association members should avoid the inappropriate exchange of information by:

- Providing reports with aggregated data and non-confidential information and anonymizing sensitive issues;
- Developing a "black boxing" system by designating one of the association's members to receive and centralize confidential information from all the members and refrain from transmitting it to competing members;
- If a company receives sensitive data from a competitor, it should formally reject unsolicited information by a clear statement that it does not want to receive such data.

### 3. Exclusion of other potential competitors

Professional association membership criteria should be established objectively so that excluded companies do not suffer a competitive disadvantage by not being allowed to benefit from the studies/reports/standards developed by the association or its members.

To avoid restriction of competition:

- Criteria for admission in the association must be clear, objective and justified;
- Access to the association's meetings and its working groups must be non-discriminatory;
- The results of the association's activities must be disseminated to all members.

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