

THE EUROPEAN LEGISLATION ON FOOD SALES AND THE STRATEGIES OF LOCAL PRODUCERS TO PROMOTE FOOD SALE

Laura MANEA

PhD Candidate Transilvania University of Braşov

Abstract : Following to establish a link between producers and consumers through effective communication tools such as product promotion and sales, Romanian food producers have realized the importance of implementing strategies to promote for achieving the long-term effects, such as consumer loyalty, brand awareness and product or change consumer behavior so as to create a favorable attitude towards the product and/or the organization. In our exploratory researches that we conducted about the sales promotion strategies on domestic producers of food, we follow up to highlight how European and national legislation on food and biological products in conjunction with advertising legislation affects advertising and promotion strategies, but also the ethical and legal effects of promotions on consumer behavior compared to those of an aggressive and unethical promotion. We also highlighted by our research carried that through own characteristics of food products unlike the rest of advertised products on the market, also the techniques for promoting food products have a special specific, while retaining own characteristic as tactical marketing and communication tool.

Keywords: food, consumer, promotion, incentive, information.

The consumer's confidence and the product promotion policy

Speaking of promoting products in general, we relate to the communication activity of the business operators, be they manufacturers or distributors, with the consumer or a market segment clearly determined, or the collective consumer, an activity in which the economic operator presents the characteristics and the benefits of the product with a view to try to convince the consumer to buy the respective product. And also generally speaking, the results of the promotion activity can be found in the short term in the increased sales volume and in the long-term in strengthening the market position of the product and/or company, including building consumer loyalty. Obviously, the promotional activity at a particular moment in the development of the economic operator may pursue other concrete results, such as the market expansion, combating the competition or launching a new product.

To paraphrase the proverb that a battle has been won but not the war, even if, following the decision to purchase, the consumer is satisfied with consuming that product, and thus the economic operator has won a battle in his siege to the heart and mind of the consumer, the organization's concern to still attract the satisfied consumer is shaping in the ongoing activity to promote the product and company, until building complete consumer loyalty.

The current promotion policy is centred on the consumer and his needs, not the product as we may be tempted to believe from the marketing mix (product, price, placement, promotion). And the promotion activities aim at increasing the consumer's confidence in the product and/or producing/distributing company, as an intermediate step in forming the decision to purchase, increasing the consumer's confidence also being the surest way to build buyer loyalty and maintain the market position.

Currently, the consumer confidence is the objective that the business operators have in mind to achieve and maintain at high levels through the promotion policy, given that the consumers' confidence, along with the ease of comparing goods and/or services, the consumer's satisfaction and the problems encountered in the acquisition and the degree to which they have generated complaints, it is one of the indicators applicable to all markets of goods and services, and together with the other three indicators mentioned contribute to the performance indicator of the market (IPP), a composite index serving as a basis for ranking the 52 markets (21 markets of goods and 31 service markets) analyzed in EU Member States since 2008 by the European Commission Directorate-General for Health and Consumers (DG SANCO). According to the dashboard (Tenth edition, 2014) of the 52 consumer markets, published in June 2014 by DG SANCO, markets that together represent nearly 60% of household spending, the global assessment of the consumers regarding the market functioning for each country, and in conjunction with a certain common market of goods and/or services is experiencing a growth trend from 2010 to the present (whether for the period 2010-2012 there are increases in the commodities markets, 2012 is generally a year of stability, while in 2012-2013, slight downward trends are registered compared to 2011, but on a growing trend compared to 2010, while the performance of services markets has been steadily increasing as shown in Fig.1.), although the situation of market trends for each EU Member State is different.

Thus, the overall index for the market performance in Romania - IPP, according to the dash board remained stable from 2010-2013, with a slight increase, insignificant statistically, although compared to the EU average, the general result in 2013 of IPP is 75.2, it is low compared to EU IPP of 80.1 (in 2010, IPP as a market average for Romania was 74.7 and at EU level, the IPP was 77.4);

Romania compared to the EU market, the fruit and vegetable market with a IPP of 68.5 in 2013 ranks Romania on the last places compared to the market performance at EU level of 78.8; the dairy market in Romania has a performance below the average of the market, with a 74.1 IPP performance in 2013 compared to the market average of 75.2, while the dairy market performance at EU level in 2013 to be 81,6 related to the market average of 80.1 (Fig.2).

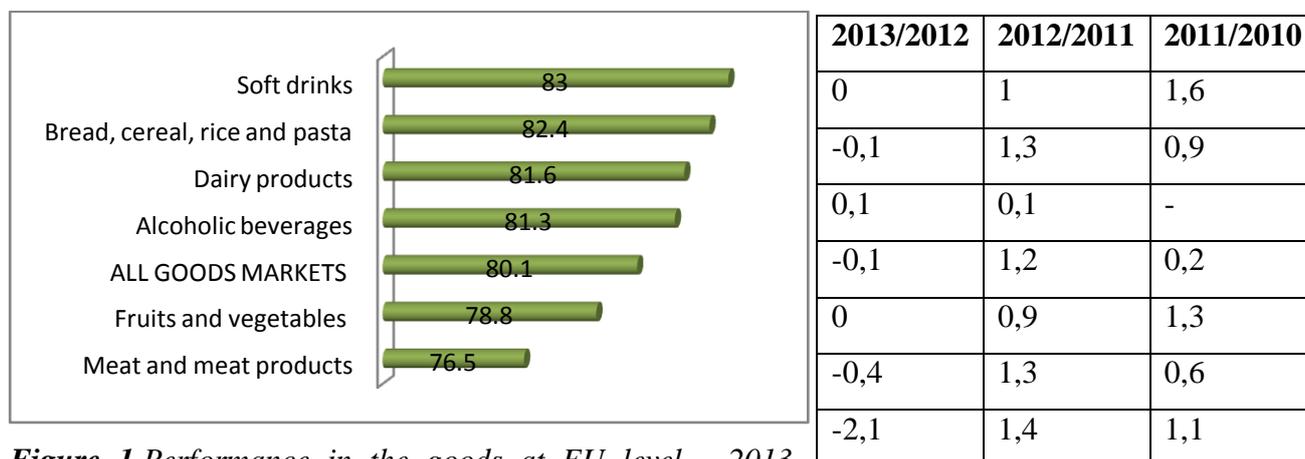


Figure 1. Performance in the goods at EU level - 2013

Source: Monitoring Study DG SANCO

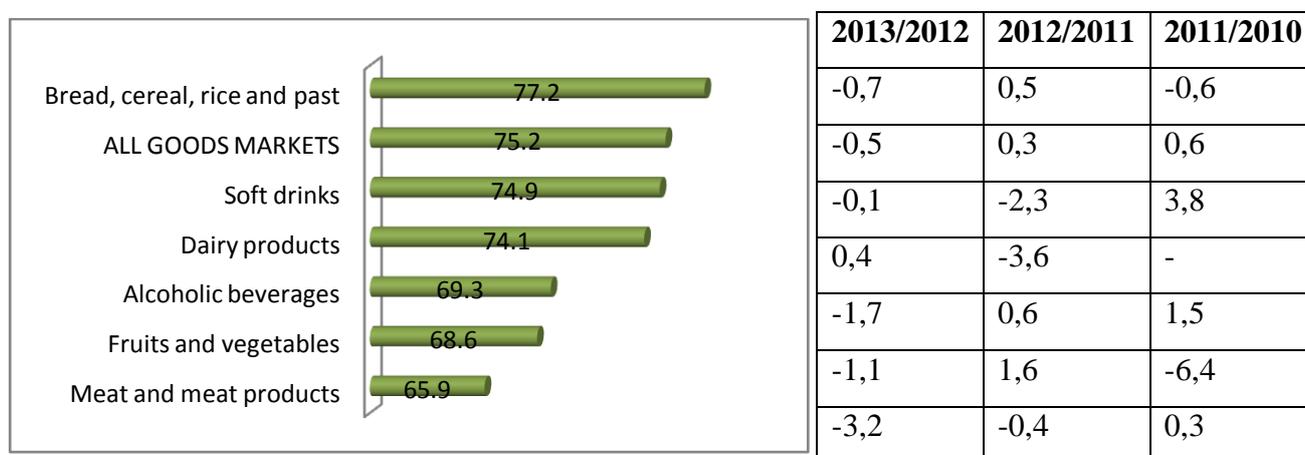


Figure 2. Performance in the goods in Romania - 2013 Source: Study Monitoring DG SANCO

The biggest decline in market performance at EU level, mainly due to the decline in the consumers' confidence, was encountered in 2012 on the meat products market, particularly in the countries affected by the scandal of the horse meat, after the balance of the meat consumption was restored following the episodes of bird flu which affected the market of poultry products. The decrease in the consumers' assessment of the meat products market in 2012, amid the publicized investigations on the processed meat products fraudulently labelled as beef, although it later turned out the contents of undeclared horse meat, was due therefore to the decline of the consumers' confidence in the processed meat products, but also the confidence in the business operators who did not ensure the security and safety of the products, the consumers feeling deceived in their expectations.

Advertising versus promoting sales in the submix promotion

The promotion Policy, a variable and controllable element by any organization within the marketing mix (Kotler, Armstrong, 1999), also known under the name of the "4Ps" (McCarthy, 1960), involves organizing and coordinating the flow of information about the product and company from the trader to the consumer, but also the consumer's feedback, through promoting techniques and strategies. Given the characteristics of food (processing level, perishability, seasonality, quantitative and qualitative variability) and the particularities of food products demand (physiological and/or environmental needs of the consumer, desires, preferences, consumer segment, and not least the gastronomic habits and traditions specific to a particular people), the role of the promotional mix in the sale and distribution of food products consists in the ability to attract more consumers and to convince them to purchase more of a particular product, while the food market contains not one or two products, but dozens of similar products made by different manufacturers, with similar tastes, but different in composition and/or type of processing. In this context, a permanent customer information is obviously needed through special messages to complement the information derived from the mere presence on the market of the products, through techniques to attract the interest and attention of the consumer, through benefits felt by the consumers and associated with the product and the company.

The concept of promotion is very wide and the activities that circumscribe it are the most varied, from advertising, commercials and promotional activities to personal sales, public relations and direct promotion, given that all these activities are aimed at influencing the consumer behaviour. Thus, the definition of promotion, from the marketing perspective, must involve both the activities circumscribed and its purpose in the long term, either by a direct expression regarding the influence of consumer behaviour, or through an indirect expression regarding the growth of the sales and profitability, reason for which we consider Jerome McCarthy's definition to be comprehensive: *promotion represents the transmission of information by the seller to the potential customers - in order to influence the attitudes and consumption* (McCarthy Perreault, 1987). Although contained in a scientific study appeared in the centralized economy of Romania before 1989, going along the same lines as McCarthy, the promotional activity is defined as *the careful information of the potential consumers and intermediaries through specific actions meant to influence the buying and consumption behaviour, to support the sales process* (Florescu eds., 1987).

And because the promotional activity is directly related to the consumer, who is presented the characteristics of the product and/or the image and importance of the company on the market, regardless of the technique and promotion strategy, it is very important that the business operator,

through the products and market conduct confirm the information thus transmitted, information corresponding to the truth, because otherwise the potential customers will feel cheated and their confidence once lost will be hard to regain, because not only will the product be perceived as deceitful but also the company's image will be affected in a negative way.

Depending on the criteria taken into account, the promotional activity is structured differently in the literature, thus in relation to the role of the company's promotional activities in the communications system (Florescu eds., 1987) the following are identified as components: **1)** advertising; **2)** sales promotion; **3)** public relations; **4)** use of brands; **5)** promotional events and **6)** sales forces. Using the intention of persuasion as criterion (Berkowitz, Kerin, Rudelius, 1989), the components of the promotional activity are grouped as follows: **1)** advertising; **2)** personal sales; **3)** free publicity and **4)** sales promotion, because in their work, Yves Cordey and Bernard Perconte identify six categories of promotional activities: **1)** sales forces; **2)** collective demonstrations; **3)** public relations; **4)** advertising; **5)** direct mail and **6)** advertising at the point of sale (Cordey, Perconte, 1992).

We believe that regarding food products, the adequate promotional activities, depending on the product characteristics and the contact with the potential consumers are: **1)** advertising (with three segments - commercial, advertising and placement of the product); **2)** sales promotion; **3)** advertising at the point of sale and **4)** public relations with the media (specialized forms of culinary press), the first two categories accounting for the largest share in today's food market in Romania.

Advertising is frequently opposed to sales promotion, the first being considered more active and effective in the economic development, as it is considered that the effects of advertising on consumer behaviour are in the long-term, while sales promotion, combining specific instruments, stimulates the short-term purchase of a higher volume of products.

Advertising, broadly speaking, including terminologically both *advertising* (the communication of information about a product paid by a sponsor clearly identified) as well as *publicity* (communicating a message in favour of a product, a brand that is not paid for the purpose of promotion) It has three main goals: remind, inform and persuade the customers (attracting the consumers' preferences to a particular brand, changing the way buyers perceive the product, convincing the buyers to buy now) (Kotler, Armstrong, 1999). Based on these goals clearly identified, regardless of the conceptualization of communication and the circumscribed activities, publicity is a persuasive activity in the medium and / or long term, with decisive results, of which the most important is the formation / strengthening of the product and company image.

Sales promotion involves the use of techniques and means to stimulate and boost the sales of goods forming the market offer of the business operator at a certain point, at the heart of the activities

being the consumer who has to be convinced to purchase the product, without putting emphasis on the rationalization and identification of his immediate needs, the purpose being to increase the sales, for the seller seeks the best alternative at that moment: a higher income obtained from the clients for whom the price does not matter too much, or a lower income, from the clientele for whom the lower price is important (Marder, 2002).

If ten years ago the ratio between advertising and sales promotion in the communicating activity of a company was about 60/40, currently the budget allocated by companies to promote sales reached 60% - 70% of the annual budget, the cost of promotion increasing yearly by 12% compared to a 7.6% annual increase in the expenses associated with advertising, including in the food products sector. Among the causes determining the increasing importance of the food products sales promotion we include: competition between rival brands; overcrowding of the markets with products less and less differentiated (and the promotion of sales attracts the consumer immediately, prompting him to buy); increasing demands of the well-informed consumers, with purchasing power, generally on the increase; the need to maintain the position of producers in the mature markets; the decreasing effectiveness of advertising, on the one hand due to the growth in the increasing costs (including the increase in the distribution price on the media channels), on the other hand because of the legal barriers and the consumer saturation; the increase in number of the market retailers and the special pressure on the producers to be given commercial bonuses, leading to lower costs for the business operators and the immediate growth of the profits, especially in the times of economic recession. We should not neglect the fact that today's society, characterized as a consumer society, urges the consumers to buy more and more, to consume more and more, to change as often as possible the products, for which the producers have to come up with real direct and immediate incentives in order to maintain the loyal customers.

Although both promotional activities, advertising and sales promotion have the stated purpose of inducing an acquisition behaviour in a target market (the final consumers or traders), unlike advertising, whose effect occurs after a period of time (necessary to repeat the advertising message and receive it) and consists in forming, maintaining or modifying the image of the product, sales promotion through direct incentives having immediate effect (Balaure, 1995). The same differentiation characteristic is also captured by Philip Kotler, who defined sales promotions as *granting incentives in the short term, in addition to the benefits offered by the respective product or service in order to encourage its purchase or sale of* (Kotler, 1998).

Promotion techniques in the sales of domestic food products and their impact on the domestic consumers

In the marketing papers, the definition of sales promotion is not unanimous by all means - Kotler defines it as *a diverse set of specific instruments, most short-dated, designed to stimulate the more rapid purchase or in a larger volume of products or services by consumers or by industrial customers* (Kotler, 1997), while according to the Romanian school of marketing (Balaure, Popescu, Serban, 1994) sales promotion corresponds to *a set of techniques that are intended to enrich the offer by adding additional value to the product, price and distribution, for a limited period of time, taking into account the company's commercial objectives and in order to gain a temporary advantage over the competition*. What is common, however, are the characteristics of the sales promotion activity: short period of time, clearly defined, combining several actions and the purpose: the sales growth, both extensively and intensively.

Aiming to determine immediately the consumer to purchase the product by providing direct incentives in the short term, the economic effects of the sales promotion are felt by the retailer through the increase in the sales revenues, however, the consumer also feels a material advantage immediately (receives a free sample of another product at the same price or receives a certain amount for free, receives a product at a lower price than before clearance, or on purchasing a product, s/he acquires a shopping voucher, etc.). In other situations, the activities to promote sales are combined with advertising actions, so the long-term outcome is building consumer loyalty, who receives the advertisement and creates his/her own image of the product and / or company, but also associates an economic advantage related to the product image as an economic bonus experienced concerning that product, .

Given the characteristics of the food products, and taking into account the classification criterion regarding the course of action in sales promotion, we identify promotional techniques that drive the product to the consumer or techniques that drive the consumer toward the product. The first category of techniques, the so-called *push techniques*, the maximum efficiency in the case of food products being secured by **price reductions** for a specific period (if the period is higher or the price of a certain brand is reduced sharply, without any other promotion elements, this action may be interpreted by consumers as a decrease in the product quality and the manufacturing cost or as an "aging" of the product on the market, the effect in these cases being obviously negative).

The forms of the sales promotion technique by reducing the price are:

- a) *The promotional launch price*, when the new product or the redesigned product (packaging changed or a reformulated food brand) has for a short, widely advertised period, including through advertisements, a lower price than the normal price;
- b) *Special offers* when certain events (Easter or Christmas celebrations, for example) or for short periods of time (ascertaining the increase in stocks and a decrease in product sales respectively)

discounts are offered compared to the normal price of sale, price reductions outlined in relation to the previous prices and the shelf price. Such reductions in the sale price charged by a trader, under the laws of Romania, must be notified to the local authorities and authorized as discount campaigns, including as regards the period when they occur.

Relating to the imposition by the producer to the supplier of a promotional price reduced, the European Commission, under the Community law, accepts such a situation when new products are launched on the market, for periods of two to six weeks, without such situations being considered unfair business practices of the companies to the consumers through anti-competitive agreements between the producer and the supplier, respectively vertical anti-competitive agreements between suppliers and distributors/retailers regarding the resale price.

A special case of discounts practiced by traders is the newer lowering of price of the food product for a period of three days before the expiry of validity, these products being stowage, in which situation the traders must locate separately on shelves or stands located and signalled separately, these products (the products in the batch with a validity period close to the expiry date are taken from the usual place where the products of that company are positioned, only products from the new batches remaining in that location, with longer validity terms), apply special labels for price reduction, which show the percentage of reduction applied and the new price compared to the old price (for the reduction to be verified by the consumer) and the shelf life must be visible (not to be removed or covered by the newly applied label) - provisions adopted in March 2015 by Law no.57 / 2015 on amending Ordinance no.99 / 2000 on the marketing of the products and services on the market, while the non-compliance with those measures is considered unfair commercial practice and sanctioned.

c) *Grouped sale or the practical package offer*, especially around the holidays, is done by simultaneously selling a number of products at a price lower than the total which would result from adding the prices of all products part of the group. This type of sale, including the recommendation to the manufacturer of a selling price is highlighted for the food products thus grouped by the way they are packed (in addition to the usual presentation packaging, the products are packed in special packages indicating the application of this promotional device).

d) *3 for 2* is the technique by which 3 products at the price of 2 are offered, also in the form of discounts, and highlighted by the packaging, or other groups of products according to the scheme (n) products at the price (n-1/2) products.

e) *The giraffe technique* is a one for reducing the indirect price, in the sense that for the same price paid, the consumer obtains a larger amount of product (10% -25%) and in the case of food products, applying this technique also results from using special packaging for the application of the

technique (e.g. the bigger yogurt plastic glass and the packaging state that 10% is free). A variation of this technique practiced by the traders is the sale of two similar products, the price of the second product purchased being reduced by 50%.

Also a push technique is granting **bonuses or rewards** on the purchase of products, a promotion technique currently used extensively, either through the *direct bonus* (offering additional gifts when purchasing the product/brand thus promoted, the additional gifts being different products such as offering a toy for the purchase of a food product for children), *the enclosed bonus* (a technique that turns the display pack into a product that can be reused by the buyer, for example, some brands of mustard are sold in packages that can be used after consuming the product as glasses or the packaging for yogurt later turns into a toy for children).

Playing techniques represent ways to promote the sales in which hazard represents the primary element. These techniques speculate the individuals' wish to obtain material benefits (sometimes very substantial) by means of a competition, in which the risk that the consumer takes is small (to buy the product thus promoted, the purchase price being much lower than the prize adjacent to the proposed game). The main playing techniques are the promotional contests, games and lotteries (Anghel, 2009).

The free trials also represent a push technique push for promotion and among the actions brought together in this technique we mention regarding food products: *the samples* (small amounts of the advertised product distributed for free to the buyer, the packaging showing the sample thus provided) and *the free gifts* (the distribution of a product as a gift to the products in the brand thus promoted, the message rendered to the consumer not being that if s/he buys a product, s/he receives the second one for free, but the second product, free of charge, is presented as a gift - knowing that only close friends, loyal customers in our case, receive gifts).

From the category of ***pull techniques***, techniques which push the consumers towards the product, in the case of food products we mention the **merchandising** - addresses the problem of optimizing the contact between the product and its potential consumer on several levels, starting with the location of the store where the product is sold, continuing with its interior design and ending with placing the goods on the display cases inside (Anghel, 2009), respectively **advertising at the point of sale**, regrouping the material means and advertising techniques directly to the point of sale (presentation, advertising columns, billboards, the presence of the mascot or animated character of the brand associated to the product, especially food products for children) part of this category being the participations in fairs, exhibitions specialized gastronomy in which tasting is a specific method of advertising for the product and for the consumer a convincing method regarding the taste quality of the products and an instant comparison to other products on the market.

Normative regulation on food sales promotion in Europe

Given the multitude of techniques to promote the sales and food products, given the consumers' rights in relation to the characteristics of the food products and the consumers' health, the role of the legislation on the sale of food products is to ensure, on the one hand, the right to a correct information of the consumer regarding the product - by regulating the information campaigns on labelling and packaging of the products - on the other hand, ensuring the administrative and operational framework in which the producers and traders are to be controlled and monitored regarding the commercial techniques used, so those unfair techniques be detected and punished (the role of the legislator is also to define the unfair trading techniques clearly and unequivocally - as is the case of Directive 2005/29/EC on unfair business practices to the consumer in the internal market.

When advertising, selling or supplying products, regardless of the technique used to promote sales, the companies must provide **clear and accurate information** to the consumer so that this purchases knowingly, in which case the EU Regulation no.1169/2011 presently regulates the conditions for labelling the food products in order to provide correct information about the product.

Furthermore, the consumer should be protected from unfair commercial practices of the traders, for which Directive 2005/29/EC is adopted at European level, which includes an annex of the trading facts falling as non-competitive practices prohibited and punishable by law. The European consumers benefit from protection against two main categories of unfair commercial practices:

the deceptive practices, which are manifested through the trader's direct action (providing false information) or omission (failure to provide important information)

the aggressive practice, whose purpose is to compel the consumer to purchase that product

Such unfair practices are: bait advertising, false free offers, false curative properties conferred to the product, children manipulation, false offers of prizes, gifts or special benefits, pyramid schemes or insistent and undesired offers. The merchants are not allowed to use practices involving the exploitation of vulnerable consumers, such as children, sick or addicted people. For example, it is illegal to put pressure on children to determine them to buy a product or to persuade their parents to do so.

Conclusions

In terms of results in time, the two components of the promotion policy - advertising and sales promotion - we can conclude that advertising gives the reason to buy (the advertisement confers the product a market position and an image to the company), while sales promotion offers the

immediate incentive to buy (obtaining a sample or another free product, a ticket in a raffle or a lottery with substantial prizes, and therefore a chance to win given the fact that they would not otherwise participate in the event, vouchers for future purchases from the same trader, etc.)

Although we have seen that in the recent years, the marketing business prevails on the food market in terms of sales promotion, which exceeded as budget the volume of the advertising activity, we must keep in mind that both activities, when used aggressively, can have negative effects on image of the product and company. Thus, if the sales incentives (e.g. free samples or the use of promotional gifts) are used too often by a company, and in particular with the same brand of products, they will become in time commonplace to the consumer, who will associate them involuntarily to main product, and so, in time, the consumer is no longer tempted to purchase the product (anyway, if s/he buys a product, s/he receives a free sample of another product, enough for his/her own needs) or in time, annoyed by the incentives offered for free, s/he will perceive as exaggerated the efforts to promote the sales and will consider primarily the product offered as free sample or the main product supported by incentives as a product of poor quality, his/her level of confidence in that product and/or producing company thus decreasing. The same negative effect on the image of the product and/or company results from the aggressive advertising

From the analysis done, we conclude that in many cases when the techniques of sales promotion accompany publicity actions, this might leads to circumstantial situations in which unfair commercial practices manifest, both from the producers and the distributors, for which the European legislation through Directive 2005/29/EC on unfair practices of the businesses in the internal market in regard to the consumers defines the unfair trade practices, including the aggressive and deceptive practices and requires the Member States to impose effective, proportionate and dissuasive penalties in national regulatory documents, as well as the establishment of national supervisory and control authorities regarding the consumers' rights. Thus, in order to harmonize the national legislation with the European one regarding consumer protection, Government Ordinance No.99/2000 on the marketing of products and services on the market and the Law 363/2007 on combating the unfair practices of traders in relation to the customers have been adopted, regulatory documents incriminating the unfair commercial practices (misleading and aggressive) and sanctioned as misdemeanours, measures to protect the consumers from the traders' abuses being thus adopted by the Romanian legislator in relation to the facts incriminated in the Annex to Directive 2005/29/EC.

Analyzing the European legislative regime regarding the regulations that restrict the unfair trade practices compared with the national legislative regime, we find that on the one hand, the national legislation is excessive, containing provisions by which the traders' actions are qualified as

restrictions under Ordinance no.99/2000 for example, but not considered unfair practices in the Annex to Directive 2005/29/EC (e.g. the case of the clearance sales), on the other hand although the specialised European Directive provides for the designation of a national authority with attributions to control and sanction the traders' abuses, in accordance with the national legislation, there are several authorities with control attributions (e.g. the town halls, the police, the Ministry of Economy and the National Authority for Consumer Protection in matters of clearance sales, in the promotional or discounted sales, the national legislation generally providing the need to obtain another preliminary permit from the Supervisory Committee of the National Office for Gambling without regulations regarding this procedure being adopted, as there are no legal provisions regarding the situations exempt from this authorization).

The legislative provision which restricts the promotion activities of the traders must be flexible, so as to leave leeway to the traders in the policy to promote products within the limits laid down, but to intervene promptly through instruments of correction and competent authorities when the trader abuses his/her market position regarding the consumer, or when s/he uses deceptive techniques, vitiating the consumer's consent regarding the buying decision. Thus, against the flexible restrictive framework of Directive 2005/29/EC, in the spirit of our conclusions, we consider it necessary to review the Romanian legislation on unfair commercial practices.

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