



SPECIFICITY OF THE CONTRACT AND THE OBLIGATION TO CONTRACT WITH PROFESSIONALS ACCORDING TO THE CIVIL CODE OF THE REPUBLIC OF MOLDOVA

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Abstract *The contract represents the source of civil obligations. It is the freely agreed document concluded between legal persons or natural persons on the basis of an agreement, freely agreed by the parties and which becomes mandatory. The contract is enforceable by law. As a result, this implies transparency, information and reporting to the Civil Code regulations regarding contracts. The conclusion of the contract involves the preparation of quality documentation to support it, containing the definition of the notions and concepts inserted in the contract.*

Key words:

will agreement, contract, concept, document, information, natural persons, legal persons, regulations, transparency

JEL Codes:

**K12
L14
M55**

I. CONTRACT. TYPES OF CONTRACTS ACCORDING TO THE CIVIL CODE OF THE REPUBLIC OF MOLDOVA

A definition of the contract is set out in the Civil Code of the Republic of Moldova in Title II, called contracts in general, in the Chapter general provisions regarding the contracts and the content of the contract. Article 992. defines the notion of the contract according to which the contract represents:

- 1) the will agreement between two or more persons establishing, modifying or extinguishing legal relationships;
- 2) The rules regarding the legal act are applicable to the contract¹.

Regarding the freedom of the contract to Article 993 of the Civil Code, it is stipulated that:

- 1) Anyone can freely choose his contractor, unless otherwise provided by law.
- 2) The Contracting Parties may freely enter into contracts, within the limits of the mandatory

¹Civil Code of the Republic of Moldova, published: 22-06-2002 in the official monitor no. 82-86 art. 661,

* republished in the official monitor no. 66-75 of 01.03.2019 art.132

legal provisions, and determine their content.

3) Unless otherwise expressly provided under the sanction of nullity, the Contracting Parties may, by contract, derogate from those provisions contained in this book that relate to the rights, obligations and other legal effects produced by the contract, including the distribution of risks.

4) The contracting parties may also derogate from the legal provisions contained in the other articles of this code, in the special laws and other normative acts that refer to the rights, obligations and other legal effects produced by the contract, including the distribution of risks, if from the way of expression of the provision, from its content or context, it does not doubt that the legal provision is imperative.

5) From the legal provisions regarding the extinction prescription of the rights resulted from the contract can be derogated only under the conditions of art. 393.

6) If, for the purpose of protecting the priority interests of the company or of an individual, the effects of a contract depend on the approval of the state authorities, the limitations and conditions must be regulated by law.

7) The obligation to conclude a contract is forbidden, unless the obligation to contract is provided by law or if it arises from an obligation assumed voluntarily.

8) The parties may enter into named contracts, unnamed contracts as well as complex contracts.

The contracts are grouped according to the relaunching of Article 994 in:

a) **NAMED CONTRACTS**. The contract is named if the law specifically regulates it.

b) **UNNAMED CONTRACTS**. All other contracts are unnamed. The unnamed contracts are submitted:

1b. agreement of the will of the parties, expressly and implicitly;

2b. applicable legal provisions:

- contracts;
- contractual obligations in general;

3b. to the established practices between the parties and the users in the field, if any;

4b. the legal provisions applicable to the so-called similar contracts insofar as they are compatible with the nature and purpose of the unnamed contract.

c) **THE COMPLEX CONTRACT**

There is talk about the complex contract in the situation where it includes, as stipulated in article 995 of the Civil Code of the Republic of Moldova:

1c. two or more elements corresponding to the named contract; or

2c. some specific combinatorial elements:

- of the named contract;
- unnamed contract.

Article 995 specifies that those elements specific to the named and unnamed contracts do not have to come against:

- the nature of the complex contract;
- the purpose of the complex contract.

Thus, the legal provisions applicable to each type of named contract or unnamed contract will be applied accordingly:

- the respective elements of the complex contract;
- the rights in the complex contract;
- obligations arising from the complex contract.

Exceptions from the ones presented are the following situations:

- a. the law provides that a certain complex contract is to be classified as a contract of a certain category;
- b. in the absence of a legal provision materializing in the fact that the elements of a category of contract predominate so that the complex contract does not fall entirely as one in that category.
- c. In situations where the complex contract as a result of a classification in a certain category applies to the contract and the rights and obligations resulting from it.
- d. The provisions of this Article 995 do not preclude the application of the mandatory legal provisions.

The aspects regarding the framework contract are stipulated in article 1003, entitled The Framework Contract that comes to make details regarding the contractual relations as well as the clauses that will be agreed by the contract, as follows:.

- the framework contract is the legal act by which the parties agree to negotiate and establish contractual relationships whose clauses will be

agreed by subsequent contracts concluded under the framework contract.

- the clauses of the framework contract supplement the content of the subsequent contract insofar as they do not contravene it or if the parties have not excluded their application in another way².

II. ABOUT THE OBLIGATION TO CONTRACT (TOWARDS CONSUMERS AND OTHER PERSONS) AND THE BINDING FORCE OF THE CONTRACT

The obligation to contract is regulated in article 997 of the Civil Code, which specifies the following:

1) if it holds a dominant position in the market, one of the contracting parties is obliged to contract in this area. It cannot, under the sanction provided by law, impose clauses that contravene competition law and no abusive clauses.

2) vis-à-vis consumers and other persons who obtain or use goods, works or services for non-commercial purposes cannot be refused without good reason to conclude a contract if the other party is a professional.

3) in the case of non-execution without justification of the obligation to conclude the contract stipulated in par. (1) or (2) of this article, the person entitled to the conclusion of the contract may ask the court to make a decision to replace the contract. The provisions of art.1000 shall apply accordingly.

The civil code stipulates the impossibility situation at the time of the conclusion of the contract in the sense that:

² Civil Code of the Republic of Moldova, published: 22-06-2002 in the official monitor no. 82-86 art. 661, *

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1) we discuss the validity of the contract and in the conditions where at the time of the conclusion of the contract one of the parties is in the position of impossibility to perform their obligation.

2) the provisions do not prevent the invocation of relative nullity in the error situation on the impossibility provided by law.

The provisions of art.1000 of the Civil Code provide the aspects of non-execution as follows:

a) in the case of non-execution without justification of the promisee's obligation to conclude a definitive contract, the beneficiary may ask the court to make a decision to take the place of a definitive contract.

The date of the conclusion of the contract will be considered the date of the definitive stay of the court decision.

b) the provisions of para. (1) does not limit the possibility of the beneficiary to resort to other legal means of defense of the creditor in case of non-performance of the obligation.

c) the court decision that will take the place of a definitive contract will be pronounced even when the promising party does not have sufficient rights to transmit or, as the case may be, constitutes for the benefit of the beneficiary the right stipulated by the contract and has no powers to dispose of that right. In this case, the provisions of art. 358.

d) apart from other grounds of resolution provided by law or pre-contract, the beneficiary has the right to the resolution of the pre-contract and when the promissory alienates to a third party the right that is the object of the definitive contract or when any

other indications appear that a breach of the promising obligations will occur appeared from the definitive contract which will direct the beneficiary to resort to the resolution of the definitive contract.

e) if the beneficiary has chosen to conclude the definitive contract or ask the court to give a decision to take the place of a definitive contract, he is not deprived of the right to invoke the material and legal defects of the benefit if he did not know them or he had to reasonably know them at the time of the pre-contract. This rule applies even if the beneficiary knew or should reasonably be aware of the defects at the time of the final contract³.

III. THE OPTION TO CONTRACT. THE OPTION REGARDING CONTRACTING IN THE LIGHT OF THE CIVIL CODE IS REGULATED IN ARTICLE 1001

The option to contract implies:

(1) By means of a pre-contract the parties can expressly provide that the promising party maintains an irrevocable offer, within the meaning of art. 1032, to conclude the definitive contract and the beneficiary has the option to accept or refuse it .

(2) The definitive contract is concluded by exercising the option in the sense of accepting by the beneficiary the irrevocable offer of the promising party, under the conditions agreed by the pre-contract.

(3) Both the pre-contract which includes the option and the declaration of acceptance must be concluded in the form provided by law for the definitive contract and, taken together, will

³art. 1000 from the Civil Code

constitute the definitive contract.

(4) In case the declaration of acceptance is concluded in authentic form, the notary's turn will be limited only to the legality of the declaration of acceptance, and not of the definitive contract thus concluded.

(5) The legal provisions regarding the pre-contract apply equally to the option. The provisions of art. (1) do not apply to the option.

The objectivity of the beneficiary's rights is subject to Article 1002 of the Civil Code of the Republic of Moldova, published: 22-06-2002 in the official monitor no. 82-86 art. 661, * republished in the official monitor no.66-75 of 01.03.2019 art.132, which regulates the following aspects:

1. the rights of the beneficiary to acquire the property right or another real right on a good under the definitive contract are opposable to the third parties: by completing the advertising formalities provided by law regarding the pre-contract; or
2. If the law does not provide the possibility to carry out advertising formalities regarding the pre-contract, if the third party knew the existence of the pre-contract regarding the good.
3. from the moment the definitive contract is considered concluded and the beneficiary is entitled to acquire the right of property or another real right under it, he may oppose his right to all third parties who have acquired rights to the property after the date of opposition to them provided for paragraph (1) and their creditors.

4. if the right acquired by the beneficiary is acquired, according to the law, by registration in an advertising register, the beneficiary may request the rectification of the register by:
 - registration of his right;
 - the cancellation of the registered rights of the third parties mentioned in par. (2) which could not be registered without the beneficiary's consent if the beneficiary had his right at the time of their registration.

Regarding the area of the scope of the consideration in case of doubt in article 1009. named

Determination of the consideration it is specified that the provisions of Article 1007 paragraph (4) shall be applied in the appropriate way.

The aspects related to the application of the provisions regarding the contracts of other obligations are regulated by Article 1010. According to which, subject to other regulations, the provisions regarding the contractual obligations are applicable to other patrimonial obligations insofar as, taking into account the nature of the obligation, this is possible.

Based on article 996. entitled The obligatory force of the contract, the contract can be modified or terminated only in accordance with its clauses or by agreement of the parties, unless the law provides otherwise.

IV. MANDATORY ASPECTS REGARDING INFORMATION IN SOME CONTRACTS CONCLUDED WITH CONSUMERS

Article 1014. Information requirements in the case of contracts, other than distance contracts and contracts negotiated outside commercial premises:

(1) Before a contract, other than a distance contract or a contract negotiated outside commercial premises, or any similar offer to produce binding effects on the consumer, the professional shall provide the consumer in a clear and understandable manner with the following information, if they do not result in obviously out of context:

a) the main characteristics of the goods or services, corresponding to the means of communication used and with the goods or services in question;

b) the full or abbreviated name, in the state language, and the state identification number (IDNO) of the professional legal person or, respectively, the name, first name and state identification number (IDNP) of the professional natural person, as well as the address of the registered office the telephone number is also established;

c) the total price of the goods or services with all taxes included or, if the price cannot be reasonably calculated in advance given the nature of the goods or services, the method of calculating the price and, where appropriate, all additional transport costs, delivery or postal charges or, if they cannot be reasonably calculated in advance,

mentioning that these additional costs could be borne by the consumer;

d) where applicable, the methods of payment, delivery and execution, the date by which or the term within which the professional commits to deliver the goods or to provide the services, including the standard delivery term established in art. 863 para. (1) lit. a), and the professional's complaint settlement policy;

e) in addition to a mention of the existence of a legal guarantee of conformity for goods, the mention of the existence of the services provided after the sale and of the commercial guarantees, as the case may be, as well as the conditions related to them (in particular, the address of the place where the services provided after the sale are offered and who is responsible for the transport costs, if applicable);

f) the term of validity of the contract or, for a contract of indefinite duration or a contract to be fully extended, the conditions of resolution;

g) where appropriate, functionality, including the application of technical protection measures for digital content;

h) where applicable, any relevant interoperability of the digital content with the hardware and software components of which the professional owns information or which can reasonably be assumed to have information.

(2) The provisions of para. (1) shall also apply to contracts for the provision of the public water supply and sewerage service, the supply of natural gas and the supply of electricity, when they are not for sale in a limited volume or quantity by default, contracts

for the supply of thermal energy or contracts for the supply of digital content that are not delivered on a material medium.

(3) The provisions of para. (1) do not apply to contracts for current needs which are executed immediately, when they are concluded.

(4) The information mentioned in par. (1) they are an integral part of the contract and cannot be modified unless the contracting parties explicitly decide otherwise.

V. CONCLUSIONS:

A. At the conclusion of contracts of great relevance is the understanding of the terms, in order to avoid distorting their correct meaning. In this sense, the Civil Code Article 1013, entitled Definition of terms comes to clarify and present the notions of:

1. goods as any movable bodily object, with the exception of objects sold by forced execution or otherwise, by law authority; water, gas and electricity are considered goods within the meaning of this section when they are offered for sale in limited volume or in fixed quantity;

2. distance contract - any contract negotiated and concluded between the professional and the consumer within a system of organized sales or service provision, without the simultaneous physical presence of the professional and the consumer, with the exclusive use of one or more means of communication remotely, until and when the contract is concluded, including any order made by the consumer that produces binding effects on him;

3. contract negotiated outside the commercial premises - a contract between a professional and a consumer, which meets one of the following conditions:

a) is concluded in the simultaneous physical presence of the professional and the consumer in a place that is not the commercial space of the professional;

b) for this contract the consumer was made an offer in the same circumstances as those mentioned in letter. a);

c) is concluded in the commercial spaces of the professional or by using the means of distance communication, immediately after the consumer has been approached personally and individually, in a place that is not the commercial space of the professional, in the simultaneous physical presence of the professional and of the consumer, except for the simple distribution of the promotional information near the commercial spaces of the professional;

d) is concluded during a trip organized by the professional for the purpose or pursuing the effect of promoting and selling to the consumer the respective goods or services;

4. functionality - how digital content can be used

5. commercial guarantee - any commitment from the professional or a producer towards the consumer, relevant available at or before the conclusion of the contract;

6. interoperability - information about the hardware

7. open auction - method of sale by which the professional offers goods or services to consumers

8. commercial space;

B. In the case of contracts concluded between a professional and a consumer, Article 1019 entitled Rights in case of non-fulfilment of information obligations:

1. The professional has the task to prove that he has fulfilled the requirements of the provisions of art. 1015-1017. This rule does not apply in proceedings for contravention or criminal liability.

2. If a professional has violated one of the obligations imposed by the provisions of art. 1011-1018, and the contract has been concluded, the professional bears contractual obligations as the other party reasonably understood them due to the absence of information or incorrectness. In case of non-performance of these contractual obligations, the consumer can resort to the legal means of defense available to the creditor according to art. 901-946.

3. Regardless of whether the contract was concluded or not, the professional who did not fulfill one of the obligations provided in art. 1011-1017 bears liability to the person entitled for the damage caused by this non-compliance. However, if the contract has been concluded and the entitled person has the reason to request the compensation of the damage caused by this non-fulfillment based on the provisions of art. 901-946, then the provisions of this paragraph do not apply.

4. The rights of the entitled person provided by this article shall not prevent the exercise of the right to cancel the contract on the basis of the provisions of art. 339.

5. Any clause contrary to the provisions of art.

1011-1018 and the present article to the detriment of the consumer is struck by absolute nullity.

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