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ECONOMIC IMBALANCES CAUSED BY THE ABUSE OF SOME CLAUSES INSERTED IN CREDIT CONTRACTS

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Abstract**:** *Credit agreements are membership contracts. Sometimes, within these types of contracts, significant imbalances can occur caused by the insertion of abusive clauses in the credit agreements. Significant imbalances are of an economic nature, created in order for professionals to obtain economic benefits in a manner that is contrary to good faith. The finding of abusive clauses is made "in concrete" only by the court. Once these abusive clauses have been found by the court, the abusive clauses can follow two variants of solutions, respectively: a). Within the contract they may be replaced by other clauses and b). they can be completely removed from bank credit agreements. In the first variant, the abusive clauses will be replaced with other clauses that will have as objective, the correction of the significant imbalances and the assurance of the balance of the credit agreements. In the second variant, the abusive clauses are struck by nullity and can sometimes have major consequences, materialized even in the cancellation of the entire credit agreement. The adopted solution will be based on the concrete situation of each case. The practice further proves the existence of these abusive clauses in one form or another, in credit agreements.*

Keywords: Harmonization, contract, clauses, European regulations, national regulations

1. General coordinates of contracts. Types of contracts.

Our research aims to present the general theoretical aspects of the contract, the typology of contracts, the identification of European and national sources of social protection, theoretical aspects related to the accession contract in a comparative law manner. Contracts represent acts of will of the parties (individuals and legal entities), through whose relationship legal relations are established, which sometimes either change within these legal relationships or lead to the termination of legal relations. The conclusion of a contract implies the freedom to conclude it under conditions of respect for the principle of good faith of the parties.

Practically, "all people have the right to free opinion and expression; this right means the freedom to express one's opinion directly and to seek, receive and impart information by any means and regardless of frontiers [15].

The validity of the contracts presupposes the cumulative fulfillment of the following conditions:

1. persons (parties to th contract), to have the ability to contract;
2. the consent of the persons (parties) to be valid;
3.the object of the contract to be quantified, or to be quantifiable;
4. the cause of the contract to be a valid one;
5. the cause of the contract to be a lawful one.

Schematically, the cumulative conditions that must be met are presented as follows:

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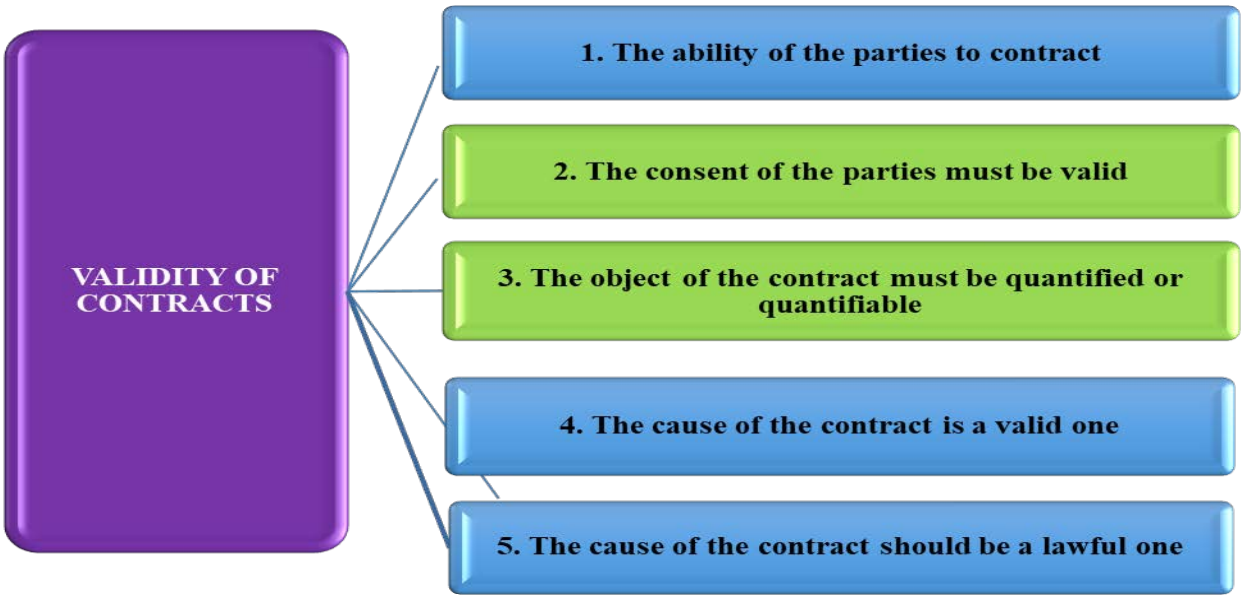


Figure 1: Conditions of validity
Source: Prepared by the author according to the Civil Code [2]

We present in a synthetic way the conditions of validity of the contracts:
1) The capacity to contract is attributed: a) to natural persons and b) to legal persons in the event that the contracts are concluded by legal persons, on their behalf will be appointed persons to represent them.
This is necessary because, unlike natural persons, legal persons acquire the capacity to exercise at the same time as that of use from the moment of the establishment and election of the governing bodies. Individuals may conclude contracts if they have reached the age requirement and if they are not prohibited.
2) The consent of the parties to be valid implies: not to be imposed by obligation and not to be given in error, which may be error of law or error of fact.
The consent (agreement of the parties) represents the manifestation, externalized, of the will of the person to conclude a contract [1]. Regarding the obligation to conclude a contract prohibited.
Exceptions are: the situations provided by the Civil Code [2]; the situations provided by law; obligation voluntarily assumed. The Civil Code allows the parties to conclude contracts, which are not provided by law. These types of contracts are called "unnamed" contracts that contain elements of the various contracts required by law. 3). The object of the contract must be quantified and quantifiable. We note that Article 670 of the Civil Code invokes the nullity of the contract in the event that the object of the contract is impossible. 4) The cause of the contract must be valid and lawful. Within the mandatory limits of law, natural and legal persons may proceed: at the free conclusion of contracts; when establishing the content. The contract is the law of the parties. From this perspective, the contract obliges the parties to comply with what has been expressly stated and with all that arises from its nature in accordance with the laws, principles of equity, and customs. The obligation to contract is laid down in Article 669, entitled: "Obligation to contract'" [2]. According to point (1) of this article, a party holding a dominant position on the market may not impose disproportionate conditions on the other party without good reason. Persons who obtain or use services or goods, for non-commercial purposes, as

well as those who seek to satisfy an existential need, may not be refused without good reason the conclusion of a contract if the other party acts for the exercise of the profession or carries out entrepreneurial activity.

The contract may be modified or terminated in relation to the clauses contained therein or by agreement of the parties in the idea that the law does not provide otherwise [2].

To illustrate the meaning of the concepts used, we present their definitions below:

Table 1 Definition of concepts

No. crt.	Concepts	Concept definition
1.	Accession [17]	Agreement concluded between two or more persons (natural or legal), from which certain rights and obligations derive; document recording this agreement [17].
2.	Contract [17]	Adherence, attachment (to something), conscious solidarity (with something). Dealing with someone to conclude an economic agreement, etc" [17].
3.	Negotiated contracts [3]	These are the types of contracts whose objects, clauses, conditions, scope, have been negotiated by the parties [3].
4.	Accession contracts [16]	They are represented by those contracts whose "content, the clauses of which are pre-established, in their entirety, by one of the parties. The other party does not have the opportunity to discuss them, she is free to accept them or not to accept them if she accepts, then she simply adheres to the pre-established contract"[16].
5.	Forced contracts [3]	They are represented by those accession contracts whose content and conclusion is established by law in a unilateral manner [3].
	Consent of the parties [2]	It is represented by the manifestation of free will of the parties [2].
6.	Balance [17]	Proportion, fair ratio between two opposite things; resulting harmony [17].
7.	Integrity [17]	The property of being or remaining intact, whole [17].
8.	Contract negotiation [2]	Possibility of the parties to establish its content through negotiations [2].
9.	Property damage [3]	It results from the violation of a right or a legitimate interest [3].

2. Legal regulations on consumer protection

Article 38 of the Charter of Fundamental Rights of the European Union states that "Union policies shall ensure a high level of consumer protection [15]. Harmonization of national legislation with Community consumer protection requirements has been achieved gradually.

Table 2 Aspects of harmonization of national legislation with European Directives

No. crt.	European directives	National legislation
1.	Directive (EU)2019/2161 of the European Parliament and of the Council of 27 November 2019 amends: 1. Council Directive 93/13/EEC 2.Directive 98/6/EC, 2005/29/EC; 3.Directive 2011/83/EU of the European Parliament and of the Council The purpose of the Directive is: 1. better compliance with the rules Union Union on Consumer Protection; 1.2. modernization of these consumer protection rules [4].	
2.	Regulation (EU) no. Regulation (EC) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on the online settlement of consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC on consumption [14].	Law no. 193/2000 of 06/11/2000, Law on abusive clauses in contracts concluded between professionals and consumers updated on 31.01.2013, republished, [12].
3.	Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and related guarantees [5].	1. Government Ordinance no. 21/1992 on consumer protection - republished on March 28, 2007, [13]. 2. Law no. 449/2003 on the sale of products and their associated guarantees, republished [9].
4.	Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts • Guide to the interpretation and application of Council Directive 93/13 / EEC of 5 April 1993 on unfair terms in consumer contracts [6].	Law no. 363/2007 of 21/12/2007 on combating improper practices of traders in relation to consumers and harmonization of regulations with European legislation on consumer protection [10].
5.	Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, The purpose of the Directive is to: a). the modification: 1. Council Directive 93/13 / EEC and Directive 1999/44/EC of the European Parliament and of the Council; b). repeal: 2. Council Directive 85/577 / EEC and Directive 97/7/EC of the European Parliament and of the Council; 3. EU guidance on the Consumer Rights Directive [7].	Law no. 449/2003 on the sale of products and their associated guarantees, [11].

Source: Processed according to the regulations on www.europa.eu [18].

We present schematically the types of contracts according to the Civil Code [2],:

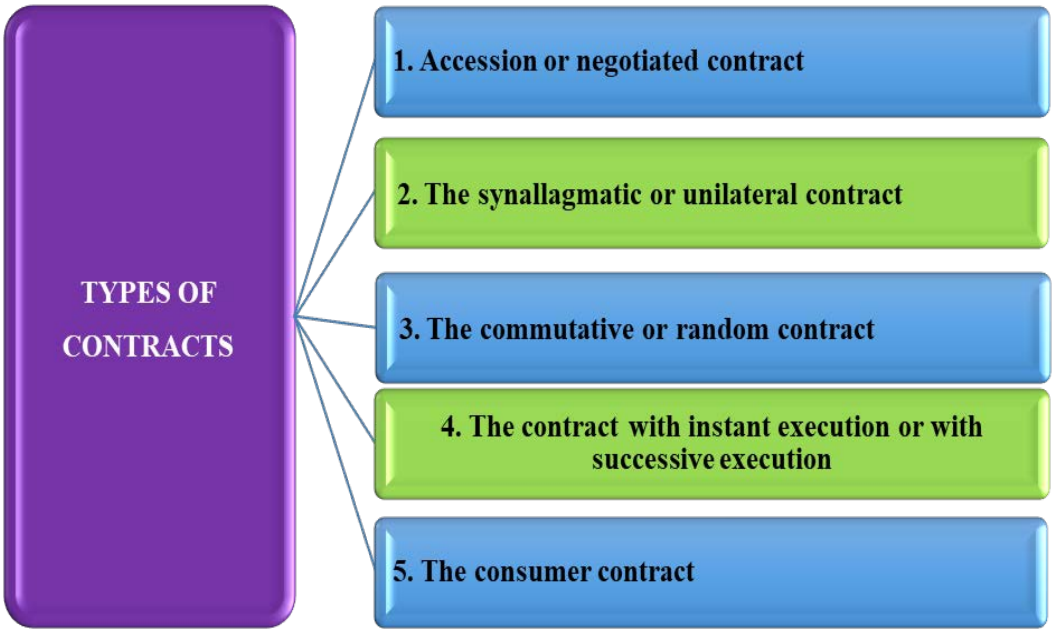


Figure 2: Types of contracts
Source: Prepared by the author according to the Civil Code [2]

In the national literature, the type of contracts according to the negotiation criteria are classified as: accession contracts, negotiated contracts and forced or imposed contracts. European Directive Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 states that "in the field of consumer protection it is

- affected by its ignorance, both by traders and by consumers;
- existing opportunities to seek remedial action could be used more frequently;
- there are gaps in domestic law in terms of truly effective sanctions;
- individual remedies are insufficient for the affected consumers;
- the obligation for Member States to establish effective sanctions;
- measures and sanctions are needed to deter infringements of the provisions of national law transposing directives;
- the establishment in national law of sanctions and the competence of the Member States;
- fines should be introduced as an element of sanctions;
- turnover-based fines;
- modernization in a number of areas of consumer protection, etc [4].

Conclusions

Lending contracts are limited to the category of membership contracts. These are pre-formulated contracts, which contain standard clauses, which are established in advance by one of the parties for general and repeated use and which are included in the contract without being negotiated with the other party [2], to which the clients may or may not adhere, understanding by this the fact that, regarding the signing of the contract, the bank's clients will be able, depending on the case, to proceed or not to sign it. The goal of professionals is to maximize profits. The position of the professional is superior to the clients, which leads to inequality of the parties and sometimes to the generation of significant imbalances, to the finding of abusive

clauses.

Freedom of contract contained in Title II, Chapter I, of the Civil Code of the Republic of Moldova, provides that persons or parties to a contract may freely conclude contracts within the limits of mandatory rules of law and may establish, modify and extinguish their content. In order to protect the priority interests of companies and individuals, the effects of a contract depend on:

1. the approval of the state authorities;
2. legal limitations;
3. the conditions regulated by law.

The conclusion of a contract considers the freedom to conclude it in accordance with the principle of good faith of the persons (parties).

With regard to the obligation to conclude a contract, the Civil Code prohibits this and specifies the exception of cases when:

1. the obligation to contract is provided by the Civil Code;
2. the obligation to contract is provided by law;
3. o the obligation to contract arises from an obligation assumed voluntarily.

Law no. 193/2000 of 06/11/2000, the clauses contained in contracts that have not been negotiated are considered abusive [8], those clauses that result in the creation of a significant imbalance regarding the obligations and rights of the contracting parties.

The negotiated clauses are considered to be the ones discussed and established prior to the signing of the contract. However, if this does not happen, the clause is considered not to be negotiated. If in a certain case a professional claims to negotiate the clauses directly with the consumer, it is up to him to prove this fact.

References List

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[9] Law no. 449/2003 on the sale of products and their associated guarantees, republished.

[10] Law no. 363/2007 of 21/12/2007 on combating improper practices of traders in relation to consumers and harmonization of regulations with European legislation on consumer protection.

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[17] https//dexonline.ro/definition/.
[18] www.europa.eu.