

Mira Malczyńska-Biały
Uniwersytet Rzeszowski
mira19@interia.pl

The economic security of Polish consumers in the context of European Union membership

Członkostwo w Unii Europejskiej a bezpieczeństwo ekonomiczne konsumentów w Polsce

Summary:

The Article is based on an analysis of the acts of EU Community law, national law and subject literature. It aims at presenting the economic security of Polish consumers within the context of European Union membership. The main purpose of the article is to show how EU membership influences the economic security of Polish consumers. It is assumed that there were two factors that affected this issue: firstly, the change of socio-economic system after the 1989 and the introduction of open market economy; and secondly in 1991 the process of the amendment of Polish legislation in the area of consumer protection to meet European standards, which culminated in accession to the European Union in 2004. Selected acts of EU and national law in the field of consumer safety have been chosen and named in the publication. The article presents the analysis of selected elements of the legal protection of Polish consumers in the light of accession to the European Union. Furthermore, the article shows the improvement in economic security of Polish consumers involved in cross-border shopping after accession to the European Union. It also mentions the tightening of legislation pertaining to unfair contract terms and improvements connected with it.

Keywords: consumer, consumers economic security, consumer rights, consumer protection

Streszczenie:

Artykuł oparty został na analizie aktów prawa wspólnotowego, krajowego oraz literatury przedmiotu i ma na celu przedstawienie bezpieczeństwa ekonomicznego polskich konsumentów w kontekście członkostwa w Unii Europejskiej. Podstawowym celem artykułu jest ukazanie wpływu członkostwa Polski w Unii Europejskiej na wybrane aspekty ochrony prawnej bezpieczeństwa ekonomicznego polskich konsumentów. Przyjęto, że na bezpieczeństwo ekonomiczne polskiego konsumenta wpłynęły zasadniczo dwa czynniki. Zaliczano do nich zmianę systemu społeczno-gospodarczego po 1989 roku oraz wprowadzenie gospodarki wolnorynkowej. Po drugie, rozpoczęcie w 1991 roku procesu dostosowania prawodawstwa polskiego w zakresie ochrony ekonomicznej konsumenta do standardów unijnych oraz w konsekwencji akcesja w 2004 roku do Unii Europejskiej. W tekście nazwano i wyselekcjonowano wybrane akty prawa unijnego i krajowego w zakresie bezpieczeństwa ekonomicznego konsumentów. Przedstawiono analizę wybranych elementów prawnej ochrony polskich konsumentów w kontekście bezpieczeństwa ekonomicznego w perspektywie akcesji do Unii Europejskiej. W dalszej części syntezy poddano poprawę bezpieczeństwa ekonomicznego polskich konsumentów podczas zakupów transgranicznych po akcesji do Unii Europejskiej. Wskazano również na zaostrzenie regulacji prawnych w zakresie przeciwdziałania stosowaniu przez przedsiębiorców nieuczciwych klauzul umownych.

Słowa kluczowe: konsument, bezpieczeństwo ekonomiczne konsumentów, prawa konsumentów, ochrona konsumentów

1. Introductory remarks

The Treaty on the Functioning of the European Union (TFEU)¹ in article 169 indicated that the Union seeks to support consumer interests, aims to provide a high level of health protection, defend economic interests and support the right to information, education and self-organization. The protection of economic interests is connected with providing protection in the process of the purchase of goods and services. Economic security is defined as the level of basic income that guarantees survival, balances development and personal dignity.² The income management is dependent on individual consumer needs. The level of income determines the spending power of an average consumer, which is why each buyer shall possess a full set of information about the terms and financial conditions of a purchase agreement. Consumer security is closely related to the legal protection of their financial interests at the time of entering into an agreement. Moreover, it is dependent on the elimination of unfair trading practices that aim to persuade the consumer to agree to a financially unattractive contract. A customer has the possibility of redress as a result of purchasing a product which fails to conform to the contractual stipulations.

The main purpose of the article is to present the influence of Polish membership of the European Union on selected aspects of legal instruments in the area of the protection of Polish consumers. It is assumed that there were two factors that influenced the economic security of Polish consumers: firstly, it was the change of socio-economic system after the 1989 and the introduction of an open market economy; and secondly, in 1991 the process of the amendment of Polish legislation in the area of consumer protection to meet European standards, which culminated in accession to the European Union in 2004.

2. The security of Polish consumers and the vision of accession to the European Union

The changes in the socio-economic system in Poland at the beginning of the 1990s had an impact on the social and economic status of consumers. In the new reality, the consumer had the right to chose from a range of financially,

¹ Consolidated version of the treaty on the functioning of the European Union, O.J. EC C 326/49, 26.10.2012.

² *Human Development Report 1994, United Nations Development Programme (UNDP)*, New York-Oxford 1994, s. 23-25

qualitatively and quantitatively attractive products and services, which at the same time made it very difficult to choose the right product.³

The consumption was limited only by the spending power of the consumer. Some products became simply unaffordable for the majority of consumers.⁴

The systemic transformation in the Polish economy placed the matter of consumer security in a new light. Threats to the customers' interests did not recede, rather they developed in another direction. An open market eliminated unfair businesses connected with the previous system and replaced it with new consumer issues.⁵ A significant threat to customers' finances that arose alongside the appearance of private capital, the spread of economic entity and opening-up of borders, included aggressive market offerings, marketing techniques, distance selling or the increased importance of loans and their new forms.⁶ It was necessary to provide the customers with legal protection on issues that used to be the concern of Western European and North American countries. They referred to unfair trade practices and terms of agreements, the use of elements of surprise, atypical or non-transparent market offers, a lack of information about the product and limited information about the terms of agreement. There were new „anonymous” products appearing on the market that had no clear information about the manufacturer and importer and were labeled in foreign languages. They were usually dangerous products, placed on the market with no information of warning.⁷ The Polish market became a perfect place for importing new and desired products and negative, avoided and criminal techniques that were forbidden in other, more developed countries.⁸ In the developing market there appeared offers and services that were economically unfair and made the customers' choice very difficult. Customers believed in every advertisement they saw, not knowing their rights or how to make use of them.

It was a relevant challenge for European Union to provide the customers with proper legal protection, enable them to fulfill their consumption needs, educate about the market, products, marketing dangers and consumer rights.

³ G. Świątowy, *Ochrona konsumenta w procesie urynkowania gospodarki polskiej i jej integracji z Unią Europejską*, w: *Socjoekonomiczna i prawna sytuacja konsumentów w Polsce w obliczu integracji z Unią Europejską*, Gutkowska K., Ozimek I., Warszawa 1998, s. 133.

⁴ M. Micyńska-Kowalska, *Zachowania konsumentkie*, Lublin 2004, s. 26.

⁵ K. Wilk, *Interes konsumenta w gospodarce rynkowej i jego ochrona*, w: *Rynkowe zachowania konsumentów*, red. E. Kieźel, Katowice 2000, s. 230.

⁶ I. Ozimek, *Stan świadomości polskich konsumentów w zakresie ochrony konsumenta w Polsce w perspektywie integracji z UE*, w: *Konsument i przedsiębiorstwo w przestrzeni europejskiej – etnocentryzm czy globalizacja?*, red. K. Karcz, Katowice 1999, s. 282.

⁷ E. Łętowska, *Prawo umów konsumenckich...*, s. 6.

⁸ Tamże, s. 8.

The process of adapting Polish Law in the area of consumer protection, to meet the European standards started in 1991, when the Europe Agreement⁹ was signed, and then, when it came into force, on 1st February 1994. The Agreement objectives were progressively realized until the accession of Poland to the EU and signing Accession Treaty on 16th April 2003.¹⁰ In the Europe Agreement, harmonization was understood as the adaptation of one legal system to the norms of the other. It was Poland that was supposed to adjust to European norms, however the Community offered technical support that included an exchange of experts, the provision of information, the organization of seminars, training and assistance in translating consumer *acquis* (art.70 of the Treaty).¹¹ Chapter III of the Agreement referred to the approximation of legislation. In accordance with Art. 68 the precondition for Polish and European economic integration was the approximation of the present and future Polish legislation to that of the EU. Poland was supposed to take all necessary measures to assure that their future legislation would be compliant with the European legislation.¹² Art. 69 established priorities in this process. They can be split into two groups: norms regulating the legal situation and functioning of the industries; and regulations referring to the rules of marketing. From the economic point of view, more important for Polish consumers was the second category that included the protection of consumers.¹³ The agreements from chapter II did not state any special form of harmonizing legislation, so its organization would depend only on Poland. Accession to the European Union obliged Poland to consolidate legal standards in the field of economic security with European standards. Among the legal regulations referring to customer protection, there are few with an overreaching priority included in the following legal acts. One of them was *Council Directive 85/577/EEC of 20 December 1985 to protect In respect of contracts negotiated away from business premises*¹⁴. The implementation of the Directive in Polish legislation was an Act from 2nd March 2000 concerning the protection of selected consumer rights and the responsibility

⁹ The European Union Association Agreement is a treaty between Poland on one side, and the European Communities and the Member Countries on the other, drawn up in Brussels on 16th December 1991, Dz. U. 1994, nr 11, poz. 38.

¹⁰ See Government's Statement from 21st April 2004 under the Treaty regulation on the Accession of Poland to EU, signed in Athens on 16th April 2003, Dz. U. 2004, nr 90, poz. 865.

¹¹ J. Galster, C. Mik, *Podstawy europejskiego prawa wspólnotowego. Zarys wykładu*: Toruń 1998, s. 190-191.

¹² Zob. J. Barcik, A. Bentkowska, *Prawo Unii Europejskiej z uwzględnieniem Traktatu z Lizbony*, Warszawa 2008, s. 483-486, Z. Doliwa-Klepacki, *Europejska integracja gospodarcza*, Białystok 1996, s. 211.

¹³ Z. Brodecki, E. Gromnicka, *Układ Europejski z komentarzem*, Warszawa 2002, s. 99.

¹⁴ O. J. L 37, 31. 12:1985 Zob. R. Kacprzak, *Ochrona konsumentów w Dyrektywie Rady nr 85/577/EEC dotyczącej umów zawieranych poza siedzibą przedsiębiorstwa*, „Biuletyn Urzędu Antymonopolowego”, nr 3, 1994, s. 7-8.

for any harm caused by a dangerous product,¹⁵ where chapter I made mention of contracts negotiated away from the business premises. Chapter II of the Act referring to the contracts negotiated away from the business premises was an implementation of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.¹⁶ The regulations of the above mentioned Directive referring to electronically supplied services were regulated in Polish Law by the Act from 18th July 2002 about electronically supplied services.¹⁷ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts¹⁸ included requirements for member Countries in the area of customer protection against unfair trading practices. Polish law was adjusted to the above Directive with the Regulation of Council of Ministers from 30th May 1995 about detailed contract terms and conditions covering transactions with the use of consumers,¹⁹ and an Act from 27th July 2002 about detailed consumer, contract terms and the change of Civil Code.²⁰ The EU legal Act regulating economic protection of customers was *Council Directive 87/102/EEC* of 22 December 1986 for the approximation of the laws, regulations and administrative provision of the Member States concerning consumer credit,²¹ changed into *Council Directive 90/88 EEC* of 13 June 1990 on package travel, package holidays and package Tours²². In Poland, the establishments of the Directive were included in the Act from 20th July 2001 about consumer credit.²³ Another directive referring to consumer protection was *Council Directive 90/314/EEG* of 13 June 1990 on package travel, package holidays and package Tours²⁴ which referred to the harmonization of regulations pertaining to holiday services and providing a consistent level of consumer protection for the clients of travel agent's in the territory of Member Countries. Polish Law was adapted to the above Directive by the Act from 29th August 1997 about travel services²⁵.

¹⁵ Dz. U. nr 22, poz. 271 z późn zm., zob. szerzej: C. Banasiński *Standardy wspólnotowe w Polskim prawie ochrony konsumenta*, Warszawa 2004, s. 51.

¹⁶ O. J. L 144, 04.06.1997.

¹⁷ Dz. U. nr 144, poz. 1204 z późn. zm.

¹⁸ O. J. L 95/29, 21.04.1993.

¹⁹ Dz. U. nr 64, poz. 328.

²⁰ Dz. U. nr 141, poz. 1176 z późn. zm.

²¹ O. J. L 42/48, 12.02.1987.

²² O. J. L 158/59, 23.06.1990.

²³ Dz. U. nr 100, poz. 1081 z późn. zm.

²⁴ O. J. L 158/59, 23.06.1990.

²⁵ Dz. U. nr 133, poz. 884 z późn. zm.

3. The security of Polish consumers after accession to European Union

Membership in European Union and the mandatory, systematic implementation of EU consumer law into Polish law considerably improved the economic security of Polish consumers. Contemporary, legal standards in the area of consumer protection differ very little from those of the EU. Legal regulations providing consumer security is the minimum protection that has to be implemented by any Member Country.

After accession to the European Union the situation of the consumer, in the area of security during the purchase process has improved significantly. Moreover, we can observe an improvement in legal protection in the area of economic interests of Polish consumers involved in cross-border shopping. Within that issue, it is important to point to legal actions of the Union against unfair trading practices and contract terms.

After 2004, in order to get the most advantageous market offer, the Polish consumer could make not only national but also international deals.²⁶ Before accession to the European Union, cross-border shopping posed considerable dangers, as there was a risk of order failure or problems with pursuing claims. Since Poland joined the European Union we can observe a significant improvement in the area of customer protection. Communication from the Commission on Cross-Border Business to Consumer e-Commerce in the EU²⁷ points to the benefits of cross-border shopping like a greater variety of products and access to products unavailable on national market. Another advantage of cross-border, internet shopping was that, financially attractive products became more accessible. Moreover, thanks to particular EU regulations, customers were secured in case of any problems with a foreign seller, especially in case of a complaint.²⁸ „The growth of e-commerce and consumers' increasing desire to purchase goods cross-border has prompted interesting debates within legislative drafting bodies concerning the best way to protect online consumers”²⁹

²⁶ „Digitalizacja rynku staje się faktem”, <http://fashionbusiness.pl/digitalizacja-rynku-staje-sie-faktem/>, [read: 13.03.2015].

²⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and Committee of the Regions on Cross-Border Business to Consumer e-Commerce in the EU, COM(2009) 557 final, 22.10.2009.

²⁸ C. Twigg-Flesner, *Good-Bye Harmonisation by Directives, Hello Cross-Border only Regulation? A way forward for EU Consumer Contract Law*, „*European Review of Contract Law*” 2011, nr 7, s. 240.

²⁹ A. H. Raymond, *Yeah, But Did You See the Gorilla? Creating and Protecting an Informed Consumer in Cross-Border Online Dispute Resolution*, „*Harvard Negotiation Law Review*” 2014, nr 19, s. 131.

There were two priority acts regulating the cross-border redress system, established within the frames of EU legislation. The regulations are as follows: Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure and Regulation (EC) No 861/2007 of the European Parliament³⁰ and of the Council of 11 July 2007 establishing a European Small Claims Procedure.³¹ They are directly applicable regulations and do not require their implementation into the national legislation in the Member Country. Further danger for the customers is posed by unfair business-to-consumer commercial practices.³²

Trade practice is said to be unfair when it is not in conformity with professional diligence and may significantly distort consumers' economic behavior (Art.5). In such a situation, a consumer may make an economically unattractive purchase. Such unfair practices include: misleading action, or aggressive commercial practices (use of harassment, coercion and undue influence). A commercial practice is said to be unfair when it misleads and misinforms the customer, which in consequence makes it untrue and misleads or may mislead the average consumer (Art 6). An example of misleading practice is the limitation of means of information, the omission of important information necessary for making a sensible trading decision (Art. 7). Economic customers' decisions are also affected by aggressive commercial practices, which include harassment with the use of physical force or illegal insistence (Art. 8).

Member Countries are obliged to provide any safety measures against unfair commercial practices. Member States shall ensure that adequate and effective means exist to combat unfair commercial practices in order to enforce compliance with the provisions of this Directive in the interest of consumers. Such means shall include legal provisions under which persons or organisations regarded under national law as having a legitimate interest in combating unfair commercial practices (Art. 11).

Polish accession to the European Union has strengthened the economic security of Polish consumers by creating high legal standards within alternative dispute resolution- ADR. Contemporarily in the European Union alternative

³⁰ Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, O.J. L 399/1, 30.12.2006.

³¹ Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, O.J. L 199/1, 31.7.2007.

³² Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of The Council ('Unfair Commercial Practices Directive'), O.J. L 149/22, 11.6.2005.

and court dispute resolutions are regulated by two Union Laws: Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC³³ and Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR).³⁴ The above regulations oblige Poland and any other member Country to implement the appropriate legal and institutional actions within this particular area.

4. Final remarks

Since 1989, along with the development of an open market and a process of accession of Poland to the EU, the economic security of the Polish consumer has changed in scope and nature. The Polish consumer in the 1990s was faced with the dangers of the open market, and became easy to manipulate. The Polish consumer, deprived of a choice or unknowing marketing rules, frequently made economically unattractive purchase decisions.

Accession to European Union undoubtedly had a positive impact on the improvement of the economic security of Polish consumers. Employers were obliged to adjust legal regulations within the field of consumer's economic interests to the European standards.

The issue of adaptation to the European standards and regulations is beyond dispute, however customers' knowledge regarding the rules is a separate question. The Polish consumer usually has a problem with recognizing unfair business practices, and at the same time does not realize such practices have a negative influence on their economic interest. The Polish consumer, who feels financially deceived after purchasing a product not in conformity with the contract, is not aware of ways to pursue claims.³⁵

To sum up, the economic security of Polish consumers after accession to the European Union includes legal protection at the time of a purchase, com-

³³ Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR), O.J. L 165/1, 18.6.2013.

³⁴ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR), O.J. L 165/63, 18.6.2013.

³⁵ *Znajomość praw konsumenckich oraz analiza barier utrudniającym konsumentom bezpieczne i satysfakcjonujące uczestnictwo w rynku-raport z badań*, Warszawa 2009, s. 36-44.

plaint and reduction of unfair competition among traders. Standardized European Law enabled financially safe cross-border shopping for Polish customers. However, if the consumers are not fully educated about their rights, there is no chance for their economically safe participation in the purchase process.

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