
Consumer Protection Law in Poland from the Perspective of EU Law

Edited by
Beata Pachuca-Smulska



Wydawnictwo C.H.Beck

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WYDAWNICTWO C.H.BECK
WARSZAWA 2017

Recenzent wydawniczy/Peer reviewer: prof. Maria Królikowska-Olczak

Redakcja/Publishing editor: Joanna Szypulska

Korekta/Proofreading: Magdalena Mularczyk

Publikacja dofinansowana przez
Uniwersytet Warmińsko-Mazurski w Olsztynie



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Wydawnictwo C.H.Beck Sp. z o.o.
ul. Bonifraterska 17, 00-203 Warszawa

Skład i łamanie: Jolanta Straszewska
Druk i oprawa: Elpil, Siedlce

ISBN 978-83-255-9535-7



ISBN e-book 978-83-255-9536-4

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From the Editor

The beginning of international development of consumer protection may be credited to John F. Kennedy, who in his 1962 speech to the United States Congress asserted the significance of consumer protection regulations and recalled that we are all consumers, and as such deserve legal protection based on the right to be informed, the right to choose, the right to safety and the right to be heard. In their relationship with entrepreneurs-professionals, consumers are always the weaker party in terms of their economic capacity, competence and access to information. Because of these disadvantages, they require extended legal protection. A dynamic development of consumer protection in Poland started in the early 1990s and was marked by two circumstances, i.e. Poland's transition from a centrally-planned economy to a market economy, and conclusion of the Association Agreement with European Communities and the subsequent process of integration with the EU (at that time the EC) member states. In the Agreement, Poland committed itself to systematically amend its legal system, including consumer protection law, and to adapt Polish regulations to those in force in the European Communities (European Union). It was undoubtedly the EU (EC) law that has revolutionized consumer protection in Poland. Since Poland's accession to the EU on May 1, 2004, both public and private law provisions have been amended several times. Numerous regulations of the broadly understood consumer law – including those of civil law (the Civil Code) as well as those of business, administrative, antitrust law (the Act on Competition and Consumer Protection) – were adapted to EU law requirements. Consumer protection in the EU is a recognized area of the internal market policy that has been a significant aspect of European integration from the very beginning due to the development of the single European market. Economic freedom and a dynamically developing internal market necessitated a high level of safety on the one hand, and consumer protection on the other. Protection of consumer interests in EU member states has been possible due to multiyear and pan-European consumer protection strategies and programs.

This monograph entitled *Consumer Protection Law in Poland from the Perspective of EU Law* undertakes the subject of Polish consumer protection regulations seen from the perspective of the most recent developments both in

Polish and EU law in this area. In addition to texts of general character, this volume also includes legal analysis of pertinent issues in (selected) sectors of the economy of special significance to consumers such as the foodstuff market, financial services, and travel services. Each chapter addresses not only current, oftentimes vigorously debated academic issues, but also strives to provide insights of importance to practitioners.

The book presents the Polish consumer protection model, and provides analysis of the most important and the latest legal acts on consumer protection in Poland. In order to keep the publication compact, the editor and the authors did not aim to review the entire Polish consumer protection system, but instead focused on current problems and referred to the most recent EU directives and Polish regulations.

The basis for legal analyses undertaken by most authors are core consumer protection acts, including especially legal mechanisms seen from the perspective of the Act of May 30, 2014 on Consumer Rights (Journal of Laws of 2014, item 827) which implemented Directive 2011/83/EU.

The book is divided into three parts and is composed of thirteen chapters.

Part One is the starting point for the analyses and includes five chapters.

Chapter One – *The System of Consumer Protection in Poland* – written by Beata Pachuca-Smulska is an overview which introduces the reader to the Polish consumer protection system and its principle legal acts by discussing its evolution, the notion and model of a consumer, legal institutions and solutions as implemented pursuant to EU regulations. This chapter sets forth a common theme underlying all subsequent chapters, which develop it in more specific directions.

The next three chapters: *Prohibition of Practices Violating Collective Consumer Interests under Polish Law* (by Anna Piszcz), *Unlawful (Abusive) Terms in Consumer Contracts* (by Anna Franusz) and *The Customer on the Advertising Market* (by Agnieszka Malarewicz-Jakubów) provide further insights into the regulatory model.

In Chapter Two, Anna Piszcz discusses consumer protection under the public law system, with the focus on prohibition of practices infringing collective consumer interests, included for the first time in the Act on Competition and Consumer Protection of 2000, and then in the new regulation of 2007 under the same title. The existing mechanisms in Polish law that counteract these practices were developed within the framework of transposition of Directive 98/27/EC of the European Parliament and of the Council of May 19, 1998. However, these regulations have been since amended. The chapter covers also the latest amendments that entered into force on April 17, 2016.

Chapter Three addresses the issue of abusive clauses in consumer contracts. The issue is presented by Anna Franusz, who discusses new solutions introduced to Article 23a of the amended Act of February 16, 2007 on Competition and Consumer Protection in its Section III entitled “Prohibition on Unlawful Clauses in Standard Contract Forms” with reference to provisions of Art. 385¹ of the Act of April 23, 1964 – the Civil Code. The first part concludes with a chapter on advertising, which due to its unquestionable significance for the economy and consumers requires adequate legal regulation. The author of Chapter Four *The Customer on the Advertising Market* is Agnieszka Malarewicz-Jakubów, who focused on regulations both of general character and those pertaining to markets requiring special consumer protection, such as the pharmaceutical market.

Part One closes with *Consumer Protection in International Private Law Regulations* by Michał Mariański. The author recognizes the significant problem of conflict-of-law provisions related to consumer protection. Due to the principle of free choice of the law applicable to contractual obligations, as laid down in the Rome I Regulation, the Author analyses the theoretical possibility of limiting consumer protection by way of choosing the law of a country that has not implemented Directive 2011/83/EU. Upon description of the selected conflict-of-law provisions of this Directive, Rome I Regulation, and the Act of February 4, 2011 on International Private Law (Journal of Laws of 2011, No. 80, item 432), it is possible to assess the actual risk of excluding consumer protection on the grounds of private international law.

Part Two of the monograph undertakes the most important issues raised by the Act of May 30, 2014 on Consumer Rights (Journal of Laws of 2014, item 827) which implemented Directive 2011/83/EU.

The opening chapter *Harmonisation Level and Regulatory Choices under the Directive 2011/83/EU on Consumer Rights* was prepared by Agnieszka Jabłonowska. This text is of major significance for further deliberations on implementation of Directive 2011/83/EU. The author highlights the problems that arose in member states as a result of full harmonisation when implementing Directive 2011/83/EU. She also recognizes the importance of provisions for which minimum harmonisation is required, and the way it affects the development of the single European market. The primary focus of Directive 2011/83/EU and the provisions implementing it is off-premises sales. Marketing and sales activities by business undertakings are frequently very aggressive, which may lead to consumers receiving unsolicited goods or services. This crucial problem is analyzed by Ewa Lewandowska in *Legal Consequences of Inertia Selling under the Polish Civil Law*, where she provides an in-depth analysis of Article 5 of the Act on Consumer Rights in connection

with Article 27 of Directive 2011/83/EU. This regulation – even though it was designed to provide consumer protection against unsolicited provision of goods and services, as referred to in Art. 9 sec. 6 of the Act of August 23, 2007 on Combating Unfair Commercial Practices – is assessed critically by the author. The following chapter *Guarantee and Warranty*, written by Sylwia Łazarewicz presents amendments regarding the issue of liability for the quality of the goods sold to the Act of May 30, 2014 on Consumer Rights. Amendments to this act did not result from changes to EU law on the so-called consumer sales, where it is still regulated in Directive 1999/44/EC. Nevertheless, the Polish lawmakers, taking into consideration ten years of experience when the Act of July 27, 2002 on Specific Terms and Conditions of Consumer Sales had been in force, decided to amend it with a view to standardize and simplify existing regimes of liability for the seller and guarantor. The regulations introduced by means of the Act constitute, therefore, a re-transposition of Directive 1999/44/EC on the sales of consumer goods. The Polish lawmakers availed themselves of the opportunity created by implementation of Directive 2011/83/EU to eliminate problems that became apparent as a result of the original transposition of Directive 1999/44/EC in 2002 (involving, first of all, weaker consumer protection *inter alia* by introducing a hierarchy of legal remedies available to the consumer). The Act on Consumer Rights, following Directive 2011/83/EU, emphasizes the special character of financial services, which require a higher level of consumer protection. Consumer protection in the financial services market is discussed by Edyta Rutkowska-Tomaszewska. The author takes a broad view on this significant issue: The paper is not limited to the provisions of the Act on Consumer Rights, but also presents key consumer protection solutions available in Polish law in the area of financial services from the perspective of EU law. This chapter forms a link between Part Two and Part Three of the book. It connects with Chapter in this book written by Wioleta Baranowska-Zajac, which opens Part Three of the monograph.

Part Three of the monograph is dedicated to consumer protection in (selected) individual markets. These are markets whose regulations affect the greatest number of consumers.

The issue of consumer protection in the financial services market is elaborated in *The Legal Situation of Consumer of Insurance Services in the Light of the Act of August 5, 2015 Concerning Consideration of Complaints by the Entities of Financial Market and the Financial Ombudsman*. Wioleta Baranowska-Zajac considers two aspects: The first one is the insurance market, while the other – the Act of August 5, 2015 on processing of complaints by the entities in the financial market and on the Financial

Ombudsman¹, which entered into force in October 2015. The following Chapter *Consumer Protection in the Polish Food Market in the Light of Selected Legal Regulations* by Irena Ozimek and Julita Szlachciuk – discusses consumer protection and its key legal acts: the Act on Food Safety, the Act on Marketable Quality of Agri-Food Items and the Act on Products of Animal Origin. The Polish and EU regulations in this area aim at granting high level of protection to consumers in the food market. The next chapter *Protection of the Travellers in Polish Law in View of the Need for Implementation of Directive 2015/2302* written by Katarzyna Frączak concerns the dynamically developing travel services market. The author refers to the Act on Tourism Services of August 29, 1997 (Journal of Laws of 2016, item 187), and presents it through the lens of Directive 2015/2302/EU. In her view the new EU regulations provide an impetus for member states to amend and improve national regulations on travel packages (package travel, package holidays, and package tours) and linked travel arrangements (LTAs). From the perspective of consumers, the most significant changes concern protection of tourists should an organizer become bankrupt or insolvent. It should be noted, however, that discretion of Polish lawmakers is restricted here due to the maximum harmonisation requirement.

In next chapter entitled *Inspector General for the Protection of Personal Data as a Safeguard of Consumer Personal Data Protection*, Agnieszka Korzeniowska-Polak deals with the topical subject of consumer personal data protection. Consumers in Poland enjoy protection of their personal data under the Personal Data Protection Act of August 29, 1997. The author discusses the ways in which personal data are protected in the Polish legal system, and considers to what degree this protection is real or illusory.

The fourth and last part of the book entitled *Selected Polish Legal Provisions on Consumer Protection* is a collection of Polish regulations of basic importance to the system of consumer protection in Poland. The goal here is to shed more light on idiosyncrasies of analyzed legal acts, help the reader better understand presented papers, and facilitate a comparison of Polish and foreign regulations. Please note that the selection covers only fragments of legal acts or provisions and does not cover their full wording.

The volume is addressed to a wide group of readers and researchers of the broadly understood consumer law, in particular to lawyers, economists, entrepreneurs, academic teachers and students.

Beata Pachuca-Smulska

Warsaw, November 2017

¹ Journal of Laws of 2015, item 1348, as amended.

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