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## **THE EUROPEAN UNION AND THE NEED TO PROTECT CONSUMERS**

### **1. Introductory remarks**

One could notice that actions to protect consumers on the level of the European Union were intensified only after the Treaty of Maastricht came into force as of 7 February 1992 (O. J. C. 191, 29.07.1992). The treaty significantly changed regulations included in the Treaty of Rome in which the pro-consumer policy had not been recognized as a common policy of the European Economic Community. After Maastricht, this policy was granted an independent status. In this manner fostering consumer protection became officially one of the EU's objectives (Twigg-Flesner 2005: 415).

Market integration promoted by means of common trade law, and in particular by the principle of free movement of goods and services, was now paralleled with an ever longer list of resolutions and communications that – even though not legally binding – suggested that some steps in the area of consumer protection should be taken. The variegated scopes and modes of consumer protection in the Member States and their systems, which overlapped with lacking consumer trust that was deemed necessary for the single market to function effectively, were seen as obstacles on the way to complete the process of the internal European market integration (Wiewiórowska-Domagalska 2005: 24).

### **2. Directions of the European Union's initiatives in the area of consumer protection (1992–2001)**

The need to protect consumers was for the first time articulated in Title XI of the Treaty on European Union, which introduced some European legal regulations in this area. According to art. 129a p. 1 of the

Treaty, the EU was to contribute to increased consumer protection. On the basis of art. 100a, the Community could implement specific actions that supported and complemented policies enforced by the Member States in the area of health care, security and consumer economic interests. Their aim was to provide the consumers with adequate information. The instruments adopted by the Council of the European Union after it had consulted the Economic Committee did not create any obstacles for any Member State to maintain or institute more stringent consumer protection measures – such measures had to be only notified to the European Commission.

Following 1992, the first document in which the directions in which the Community would act within the area of consumer protection were outlined was the Council Resolution of 13 July 1992 on future priorities in the development of consumer protection policy (O. J. C. 186, 23.07.1992). This document formulated some specific proposals to act, such as building consumer trust in the single market and ensuring a better flow of information (transparency) in the area of health, security and consumer economic interest protection. As far as future concerns, the Council encouraged the European Commission to take interest in issues such as unfair advertising.

In its annex, the 1992 Resolution listed six priorities for the policy of consumer protection. The first of them was related to its integration with other policies in the area of consumer interest protection and promotion. It indicated that taking adequate steps was necessary as far as issues that were especially sensitive from the consumer's vantage point. Also, some legal procedures to protect the consumers' interests were called for. The next objective was connected to the provision of adequate information and consumer education. Education and information concerning the single market were to safeguard the interests and rights of the consumers. Legal redress was the third priority. In this context, a need was pointed out to simplify those legal procedures in the Member States that were applied to consumer disputes. Moreover, the consumers were to be provided with legal assistance. However, those consumer disputes that had been earlier resolved by the European courts were to be respected. The fourth objective was linked to consumer safety and health. It was to be achieved by applying and monitoring legal regulations concerning safety and health as well as by leveling out differences in the consumers' access to consumer products in the individual Member States. The next priority involved creating a stronger representation of the consumers. This was to be achieved by

developing a dialogue between various actors and supporting common European consumer organizations. The last of the objectives concerned economic interests of the consumers. It was to be reached by improving consumer regulations that were binding in the common area of contract warranting as well as by improving the quality of after-sale services within the single market.

In response to the proposals included in the 1992 Resolution, the Second Commission three year consumer policy action plan 1993–1995 (COM (93) 378 final, 28.07.1993) was announced. It envisaged centralization of the Commission's activities that served to develop consumer trust in the single market as well as increasing consumer information, access to justice and consumer safety and health. The plan formulated an ambitious EU law-making program that focused on the consumers. The aims of the program included elimination of technical, legal and financial disparities in trade between the Member States (point 1). In accordance with its point 11, the plan focused on two fundamental issues: consolidation of the Community legislation and selective priorities to raise the level of consumer protection and to make the consumers more aware of their rights.

The next Communication from the Commission – Priorities for Consumer Policy 1996–1998 (COM/95/519 final, 31.10.1995) – openly mentioned the need to create regulations enabling buyers to take advantage of the growth of information society. It indicated that the consumers could only make informed and rational choices when the information found on the product was supplemented with specific annotation regarding its impact on natural environment and only when it was neutral and trustworthy.

Strengthening and developing of consumer representation constituted the next objective for the Commission's activities that consisted in providing support for the existing consumer organizations and in lending assistance to newly established ones. The Commission's communication pointed out that the consumer associations played a fundamental role in providing information and legal consultation to the European consumers, including issues related to basic food hygiene, use of medicines, home economics, food conservation and issues related to unsafe production.

The Treaty of Amsterdam (O. J. C. 340, 10.11.1997), which was signed on 2 October 1997, introduced amendments to the earlier regulations included in art. 129a of the Treaty of Maastricht. The list of the Union's consumer policy's tasks was expanded by including education

and representation of the consumers. The Community was to contribute to these objectives by means of instruments designed with the aim of reinforcing the Member States' policies (art. 153 point 3). As far as integration of the consumer policy with the other common policies and actions of the European Union, point 2 was added, according to which requirements derived from the need to protect consumers were to be taken into account while defining and implementing all other Community policies and actions. The provisions included in art. 153 of the Amsterdam Treaty created a potential constitutional basis for the development of common strategies in the area of the EU consumer policy which were independent from market integration (Weatherill 2005: 17).

The next communication from the Commission contained an action plan in the area of consumer policy for 1999–2001 (KOM (98), 14.01.1998). The Commission indicated three categories of objectives in the area of consumer protection in the EU: increased effectiveness of the consumer voice; higher level of consumer safety and health; full respect for the consumers' economic interests.

Creating guarantees for a more effective consumer voice in the EU, defined in terms of one of the Commission's objectives, was broadly described in point 3 of the proposed action plan. In order to have this objective achieved, it was necessary to make provisions for effective operation of consumer associations (point 3.1). To achieve this aim, the Commission announced its financial support for consumer organizations. It was to ensure and strengthen their capacity to undertake collective actions. The Commission made also plans to initiate an effective dialogue between the consumers and entrepreneurs by promoting their mutual understanding (point 3.2).

The next objective during that period had to do with providing for a higher level of consumer safety and health. This task was prompted by a growing number of unsafe products and services that appeared on the market (point 4). To achieve this aim, the Commission was to analyze the functionality of the existing laws that had an impact on consumer health and safety. In addition, attention was also drawn to the issue of exporting to the third countries of products that constituted a threat to their users' health and life, which had been banned or withdrawn from the Union's market. Moreover, the Commission elaborated a legislative proposal that included market restrictions concerning the use of dangerous substances (point 4.3).

The last of the aforementioned Commission's actions was related to the strengthening of the consumers' position in the EU by creating

instruments to guarantee better information monitoring and response to consumer emergencies (point 4.4). The Commission intended to carry out inspections concerning food products. Their results were to be published in its special-purpose reports. These measures were thought to make it possible to take more specific steps in order to improve regulations regarding consumer safety and health.

Another important area of the Commission's activities for the years 1999–2001, which was already mentioned in the analyzed communication, was measures to increase respect for economic and legal rights of the consumers in the EU (point 5). A necessity was stressed to revise the existing regulatory structures in the area of consumer credit (with a special emphasis on its growth) alongside the need to monitor credit brokers' conduct. Moreover, protecting economic interests of the consumers required a more effective implementation of regulations concerning products and services.

### **3. Directions of the European Union's actions in the area of consumer protection (post- 2001)**

The Treaty of Nice, which was signed on 26 February 2001, amending the Treaty on European Union and the Treaties establishing the European Communities and some related legal acts (O. J. C 80, 10.03.2001) did not introduce any changes in Title XI dedicated to consumer protection. A regulation relevant to the development of consumer rights protection as far as consumer representation was provided by art. 2 point 39 that modified art. 257 of the Treaty establishing the European Community. This modification involved establishing the Economic and Social Committee. Since then the Committee has played the role of a consultative body which consists of representatives of various economic and social groups, including consumers.

After the Treaty of Nice, the European Union's actions in the area of consumer protection were outlined in the Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, Consumer Policy Strategy 2002–2006 (COM (2002) 208 final, 07.05.2002). The new strategy for the common consumer policy in the period 2002–2006 was deduced from the principles underpinning the single market. Free movement of goods and services was premised upon adoption of common, or at least convergent, regulations ensuring that consumers are

simultaneously and adequately protected. Also, it was planned that the consumers should be enabled as far as making autonomous and informed choices regarding goods and services within the European Union as a whole. The 2002–2006 strategy defined three mid-term objectives that were to be achieved by means of a whole series of actions to be implemented within the five-year period. Those were to include short-term instruments that could be rapidly adjusted to the changing circumstances (point 2.4).

The first of those objectives was related to ensuring a higher level of consumer protection in the Community. It involved harmonization of basic regulations in the area of market practices and consumer legal contracts. To achieve this aim, on 20 July 2004, Directorate General for Health and Consumers of the European Commission formulated ten basic principles of consumer protection in the EU. They included the right to buy goods of one's choice and the right to buy the goods in a location of one's choice, the right to return defective items, protective measures in the area of food products and other consumer goods, the right to information about consumer goods, guarantees for fair conditions of consumer contracts, the right for the consumers to change their mind, measures to facilitate price comparisons, a ban on misleading information, measures to protect the consumers during holidays and provisions for assistance in effective resolution of cross-border consumer disputes (Haidar 2005: 24–25). The above listed principles involved harmonization of directives and standards in order to guarantee safety of goods and services. Also, they resulted in the strengthening of the entrepreneurs' responsibility *vis-à-vis* the consumers by introducing complementary forms of regulation, such as self-regulation, co-regulation and standardization. Ensuring a higher level of consumer protection in the Community required many actions in the area of providing guarantees for consumer safety and the free movement of consumer goods and services (point 3.1.1).

Important actions implemented by the Commission in the period 2002–2006 included also its pressure for transparency and adequate representation of consumer interests in the area of international standardization. The Commission promised to promote and protect consumer interests within the World Trade Organization (WTO) as well as in the context of bilateral relations and agreements (point 3.1.6).

Effective co-operation as far as enforcement of the existing regulations in the area of consumer rights constituted one more of the aims emphasized in the analyzed strategy (point 3.2). Actions undertaken in

this respect included four short-term objectives. They were related to collaboration between the Member States in the area of trading practices and product safety; provision of adequate information concerning safety of goods and services; better and easier access to justice and alternative out-of-court-settlement procedures to resolve cross-border consumer disputes; and ensuring support for the development of consumer organizations.

The last of the Commission's objectives for the years 2004–2006 involved ensuring that consumer organizations had adequate impact on the EU consumer policy. The consumer organizations were to have a say regarding all initiatives that had a bearing on the consumers on all stages of the decision-making process (point 3.3.1.2). The move to ensure the consumers' participation in the EU policies was also evidenced by the consumers' representatives' participation in the EU consultative bodies and action groups as well as their involvement in the EU institutions (point 3.3.2). The EU strategy for its consumer policy in the period 2002–2006 ended with a conclusion stating that all consumers who buy goods and services within the Community's borders should enjoy the same protection.

Accession of new Member States to the European Union in 2004 and 2007 meant that they were required to develop open markets and implement the Union's standards in the area of consumer protection. Therefore, the basic aims of the Union's consumer policy as envisaged for the years 2007–2013 – according to the Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee – EU Consumer Policy Strategy 2007–2013 – Empowering consumers, enhancing their welfare, effectively protecting them, COM (2007) 99, final, 13.03.2007) – was to ensure market transparency and safety of goods and services. These measures were to facilitate elimination of unfair good providers from the single market and to assist the consumers in making purposeful and accurate choices (point 2.2).

In the period 2007–2013, the Commission has been trying to achieve three priority objectives. The first of them concerns the strengthening of the consumers' position in the EU by ensuring that they have a decisive role in the process of competition development. The second objective is connected with improving the consumers' quality of life. The last of the objectives aims at making sure that the consumers are effectively protected against threats that they cannot shield themselves from on their own (point 3).

The Treaty Changing the Treaty on European Union and the Treaty Establishing the European Communities, which was signed in Lisbon on 13 December 2007 (O. J. C 306, 17.12.2007), introduced an important division of competences in the area of consumer protection within the EU. In its part B concerning changes in point 12, the Lisbon Treaty introduced provisions which outlined the categories and areas of the European Union's competences. Two types of competences were distinguished. They included competences exclusive to the Union and competences shared by the Union with its Member States. According to the new art. 2c point 2, consumer protection was included in the competences shared between the Union and the Member States. Accordingly, both the Union and the Member States may make laws and adopt legally binding acts in this area. This means that the Member States exercise competences in the area of consumer protection to such an extent that the Union has not exercised its own competences in this area or decided not to exercise them (new art. 2a point 2).

#### **4. Concluding remarks**

Initially, consumer protection in the EU was conceived of as a not fully autonomous „by-product” of the policy to protect competition. In time, it turned out that the policy to protect competition on its own does not ensure consumer protection, which led to the gradual emancipation of consumer protection as an independent common policy (Łętowska 2002: 15). The initial aim of the European integration involved guarantees for free movement of goods, services and workforce as well as ensuring competition and eliminating discrimination in the realm of economic activity. Issues of consumer protection had been largely declarative in nature, while practical actions in this area were delegated mainly to consumer organizations.

After the Treaty of Maastricht was signed, the consumer became an object of integrative actions which were carried out with the aim of improving his/her position (consumer empowerment). By contrast, in the preceding period consumers had been essentially conceptualized in terms of buyers of goods and services that were offered within an integrated and competitive European market (Niepokulczycka 1999: 25).

Summing up, one could state that all actions taken in the post- 1993 period by the EU in the area of consumer protection have aimed at the

leveling out of the so far unbalanced position of the consumers *vis-a-vis* goods providers, and not at granting them any special privileges.

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